

Witness: Emmanuel (Chris) Kaitson

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENBRIDGE ENERGY COMPANY,)	
INC. AND ENBRIDGE MIDCOAST)	
ENERGY, L.P. f/k/a)	
ENBRIDGE MIDCOAST ENERGY,)	
INC. f/k/a MIDCOAST ENERGY)	
RESOURCES, INC.,)	
Plaintiffs,)	
)	
vs.)	CASE NO. H-06-0657
)	
UNITED STATES OF AMERICA,)	
Defendant.)	

ORAL DEPOSITION

EMMANUEL (CHRIS) KAITSON

January 31, 2007

ORAL DEPOSITION OF EMMANUEL (CHRIS) KAITSON,
produced as a witness at the instance of the Defendant
and duly sworn, was taken in the above-styled and
numbered cause on the 31st day of January, 2007, from
9:37 a.m. to 4:53 p.m., before Laraine L. Toliver,
Certified Shorthand Reporter in and for the State of
Texas, reported by computerized stenotype machine at the
offices of Vinson & Elkins, LLP, 1001 Fannin Street,
Conference Suite 2500B, Houston, Texas 77010, pursuant
to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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3 (Pages 6 to 9)

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<p>1 MR. COFFIN: Usual stipulations, 2 Mr. Stern? Everything -- objections reserved except as 3 to form of the question? 4 MR. STERN: Sounds good. 5 MR. COFFIN: Okay. Just a little 6 housekeeping. Emily, I promised you a disk of our 7 documents, with our generated Bates stamp numbers, and 8 here's the disk; it's a DVD. And it should contain 9 everything that we've produced to you in the past. The 10 only difference is we Bates stamped them after the fact 11 with our Bates numbers. They already had your existing 12 Bates numbers on them, or whoever else may have produced 13 them; and so I just wanted to give that to you on the 14 record so I don't have to do a transmittal letter to 15 you. 16 MS. PIPKIN: Thank you. 17 MR. STERN: Also, we learned yesterday -- 18 we learned when we met with Richard Robert a week or so 19 ago, two weeks ago, that he had a computer that had 20 crashed in his personal possession that he had used at 21 Midcoast and Enbridge, and we've had it restored and we 22 learned yesterday that it was -- we were able to restore 23 it. We have not been able to review anything on it. 24 And I guess the question is: do you want to defer -- 25 it's going to take us a week or so to actually</p>	<p>1 MR. COFFIN: Okay. All right. Well, 2 let's just play it by ear then. I want to go ahead and 3 take the deposition tomorrow since Kevin is here from 4 San Francisco and I'm down here. Let's do that and then 5 we'll just play it by ear after the fact, if that's all 6 right. 7 MR. STERN: Okay. That's fine. 8 MS. PIPKIN: And I did want to note for 9 the record, Mr. Coffin and I did have a conversation 10 about this last week as well, to let him know that -- 11 MR. COFFIN: Yes. Yeah, I'm not surprised 12 by this at all. 13 Okay. Are we ready? 14 EMMANUEL (CHRIS) KAITSON, 15 having been first duly sworn, testified as follows: 16 EXAMINATION 17 Q. (BY MR. COFFIN) Please state your name for the 18 record. 19 A. Emmanuel Kaitson. I go by Chris. 20 Q. Okay. And your current address? 21 A. Business or home? 22 Q. Home. 23 A. Home. 5121 Jessamine, J-E-S-S-A-M-I-N-E, 24 Bellaire, Texas 77401. 25 Q. Mr. Kaitson, I'm David Coffin with the</p>
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<p>1 produce -- if there's anything on there that's relevant 2 and called for in your request, it's going to take us a 3 week. And we've got Richard scheduled for tomorrow. 4 So, the question is whether you want to defer Richard 5 until you get the documents or you want to go forward 6 with Richard? 7 MR. COFFIN: I'd rather not, Mr. Stern, if 8 you don't mind, since we're here. You know, we've kind 9 of got these schedules set out. We don't have any of 10 the documents you're talking about? 11 MR. STERN: If any. 12 MR. COFFIN: If any, okay. 13 MR. STERN: Yeah. 14 MR. COFFIN: If we get them later, I don't 15 suppose you would be open to a supplemental deposition 16 if we needed to? I mean, I'm not crazy about the idea, 17 but if we needed to do a -- you know, depending on the 18 number of documents there are that are new, if we could 19 do a little supplemental deposition after the fact, 20 that's one option. Another option would be perhaps if 21 you would maybe stipulate that they are business records 22 and then I wouldn't have to take the deposition. 23 MR. STERN: You know, to the extent we can 24 short circuit anything by stipulating regarding the 25 admissibility of documents, I'm willing to do that.</p>	<p>1 Department of Justice Tax Division representing the 2 United States in this matter. 3 Have you ever -- you're an attorney; is 4 that correct? 5 A. Yes, sir. 6 Q. Okay. And you're the inhouse general associate 7 counsel, is that fair, associate counsel for Enbridge? 8 A. Correct. 9 Q. Inhouse -- associate general counsel is your 10 current title? 11 A. That's my current title, yes, for Enbridge. 12 Q. All right. And being a lawyer, have you ever 13 given a deposition before or taken -- 14 A. One time. 15 Q. You've given a deposition; you've testified in 16 a deposition? 17 A. One time. 18 Q. All right. You understand the rules then, just 19 the ground rules is what I call them? These are not set 20 in stone, but if you'll try not to interrupt me, I'll 21 try not to interrupt you. 22 A. Okay. 23 Q. If you don't understand a question, just ask me 24 to restate it and I'll try to restate it as best I can. 25 If you need any breaks, just let me know. We'll take</p>

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<p>1 plenty of breaks. Mr. Stern may raise some objections, 2 but I'd ask you to respond to my question unless he asks 3 you not to do so. 4 Do you understand those rules? 5 A. Yes. 6 Q. Okay. Are you on any medical or medication 7 right now that may inhibit your ability to understand 8 these questions that I'm going to ask you today? 9 A. No. 10 Q. Okay. No medical conditions or anything like 11 that? 12 A. No. 13 Q. Okay. And you're currently employed with 14 Enbridge; is that right? 15 A. That's correct. 16 Q. And the official name of the company that you 17 are employed by is Enbridge (U.S.) Inc.? 18 A. That's one of the subsidiaries. The actual 19 employer is Enbridge Employee Services, Inc. That's who 20 our paycheck comes from. 21 Q. Okay. And that's -- 22 A. It's a subsidiary or affiliated company with 23 the companies on my business card. 24 Q. Who is the parent of those companies? 25 A. The parent company would be Enbridge, Inc.</p>	<p>1 their responsibilities include all the U.S. assets. So, 2 basically, I am the attorney that -- with my staff that 3 are responsible for the U.S. assets. 4 Q. Okay. Who is the president and GM here in 5 Houston? 6 A. The president is -- of the partnership Enbridge 7 Energy Partners, that company's general partner is Terry 8 McGill. The general manager of the U.S. assets is Steve 9 Letwin. 10 Q. Steve? 11 A. Letwin, L-E-T-W-I-N. 12 Q. Is there a -- can you go over the corporate 13 umbrella of Enbridge, Inc.? Is that something you do 14 quickly without looking at a chart or anything? 15 A. I can try. 16 Q. Okay. 17 A. There are four publicly-traded companies that 18 are part of what I would say is the Enbridge family. 19 Enbridge, Inc. and another company up in Canada, and 20 then there are two publicly-traded companies here in the 21 United States: Enbridge Energy Partners, LP, and 22 Enbridge Energy Management, LLC. And those are the two 23 entities that I do the majority of my work for. 24 Q. The latter two? 25 A. Correct. Those are both publicly-traded</p>
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<p>1 Q. Okay. And your business card also shows that 2 Enbridge Energy Company, Inc. Is that another 3 subsidiary of Enbridge, Inc.? 4 A. Correct. 5 Q. Okay. How long have you been employed by this 6 company? 7 A. Enbridge acquired Midcoast in 1999 and I have 8 been employed with -- I'm sorry, in 2001, excuse me, and 9 I have been employed with them since then. 10 Q. Okay. And your previous employer was 11 Midcoast -- what's the full name? 12 A. Midcoast Energy Resources, Inc. 13 Q. So you were with Midcoast Energy Resources, 14 Inc. in 2001 and prior thereto? 15 A. Correct. 16 Q. Okay. When did you begin your employment with 17 Midcoast Energy Resources, Inc.? 18 A. 1997. Halloween, 1997. 19 Q. What are your current responsibilities at 20 Enbridge? 21 A. Oh, as associate general counsel, I report -- I 22 have dual reporting requirements. I report to the 23 general counsel up in Canada, which is the general 24 counsel of Enbridge, Inc., and I also report to the 25 president and general manager, both here in Houston, and</p>	<p>1 companies. 2 Q. Okay. 3 A. So with those companies, then I also have 4 responsibility for the various different filings 5 associated with them. 6 Q. Okay. And at the -- now, who is the parent or 7 who owns Enbridge Energy Partners, LP? 8 A. It's a publicly-traded company. 9 Q. Publicly-traded, okay. 10 A. Right. 11 Q. Is it -- is a large number of its stock owned 12 by -- shares owned by Enbridge, Inc.? 13 A. I believe it's about 17 percent. 14 Q. Okay. And then the Enbridge Energy Management, 15 did you say LLC? 16 A. Correct, yes. 17 Q. That's publicly-traded as well? 18 A. Correct. 19 Q. And the general counsel, you mentioned earlier, 20 he actually works for -- 21 A. He's with Enbridge, Inc. up in Canada and his 22 responsibilities are for all of Enbridge assets 23 worldwide. 24 Q. Okay. So you report to him under Enbridge, 25 Inc. by virtue of their stock ownership that they own?</p>

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<p>1 Enbridge, Inc. owns the Energy Partners and Energy 2 Management? 3 A. Correct. 4 Q. Okay. 5 A. And, actually, the employer, Enbridge Employees 6 Services, Inc., the one that issues our paycheck, that 7 is a subsidiary of Enbridge, Inc. -- 8 Q. Okay. 9 A. -- indirectly, a couple layers down. 10 Q. Boy, talk about a stop down. 11 Okay. So, when you say you -- did you say 12 you handled the assets; is that what you said? 13 A. I'm responsible for the legal compliance -- 14 Q. Okay. 15 A. -- and providing legal services for the U.S. 16 assets. 17 Q. Okay. Give me your educational history, 18 beginning with where you graduated from high school. 19 A. High school, Crawfordsville High School in 20 Crawfordsville, Indiana; college, Indiana University, 21 Bloomington, Indiana; law school, South Texas College of 22 Law here in Houston, Texas. 23 Q. What did you major in in your undergrad 24 studies? 25 A. Forensics.</p>	<p>1 Q. Can you spell that for me, please? 2 A. M-O-N-C-U-R-E; Harris, H-A-R-R-I-S, and Eidman, 3 E-I-D-M-A-N. 4 Q. And I suppose when you were working with 5 Bechtel you were going to law school; is that right? 6 A. Correct, yes. 7 Q. At South Texas, you said? 8 A. Yes. 9 Q. What year did you graduate from law school? 10 A. '81. 1981. 11 Q. Okay. And did you go to work for Moncure 12 Harris in 1981? 13 A. Correct, yes, I did. 14 Q. All right. And how long were you there? 15 A. I was there about three years. 16 Q. Okay. What kind of -- what areas of law did 17 you practice in? 18 A. I was primarily doing entry level associate 19 work, whatever one of the partners required, 20 researching, writing memos, reviewing documents, taking 21 notes at meetings. 22 Q. Was that a litigation firm or a -- or an 23 employment firm? 24 A. It was a general firm that each of the partners 25 had a different area of specialization. Moncure's</p>
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<p>1 Q. Did you work in between the time you graduated 2 from Indiana University -- 3 A. Yes. 4 Q. -- and before you went to law school? 5 A. Yes. 6 Q. Okay. Tell me where you have been employed 7 then since graduating from college, undergrad. 8 A. I was a prison guard in Indiana. After that, I 9 moved to Houston and worked for Brown & Root. 10 Q. What is that? 11 A. Brown & Root is a construction company 12 headquartered here in Houston. They do work all over 13 the world. And following that, I went to work for 14 Bechtel, which is also a construction company that does 15 international construction work. 16 Q. What kind of duties did you have with those 17 construction companies? 18 A. I was in the contract administration department 19 or procurement department, I believe it's actually 20 called, procurement department responsible for working 21 on specific projects with contracts and purchasing and 22 some scheduling, construction related. 23 Q. All right. And then after Bechtel? 24 A. After Bechtel, I went to work at a law firm 25 here in Houston, Texas, Moncure, Harris & Eidman.</p>	<p>1 specialization was real estate; Harris was a litigator; 2 and Eidman was trust, wills, that type of work. 3 Q. Did you do -- did your work -- strike that. 4 Did you primarily do work for all three of 5 them or one in particular? 6 A. I primarily worked for all three of them. 7 Q. So you worked for them for three years or 8 approximately three years and then where did you go? 9 A. I went into business for myself, opened my own 10 practice, and did a general practice, primarily real 11 estate construction, but did general work as well. And 12 in about 1988 I joined Enron. 13 Q. How long did you work for Enron? 14 A. Till 1995. 15 Q. And were you inhouse counsel for Enron? 16 A. Correct. I was what they called an operations 17 attorney, which was -- my responsibilities included 18 operations of the pipeline, the right-of-ways associated 19 with it, and incidents, construction, injuries on the 20 pipeline, lawsuits related to the pipeline construction. 21 Q. Okay. And then in 1995 where did you go? 22 A. I left at that time to go to work for Republic 23 Gas Partners, which was a new start-up company that 24 owned Mid Louisiana Gas Company and a couple other small 25 subsidiary companies.</p>

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<p>1 Q. Here in Houston as well?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. How long were you with Republic Gas?</p> <p>4 A. I was with them until 1997, when Midcoast</p> <p>5 purchased that entity. And that's when I became</p> <p>6 employed by Midcoast Energy.</p> <p>7 Q. Okay. What position did you take with Midcoast</p> <p>8 in 1997?</p> <p>9 A. I was the only attorney. My title was general</p> <p>10 counsel.</p> <p>11 Q. Midcoast did not have one on staff at the time?</p> <p>12 A. Correct.</p> <p>13 Q. And, so, your duties ranged in what?</p> <p>14 A. It wasn't the traditional general counsel role</p> <p>15 that I identify with today. At that time, the company</p> <p>16 had gone through many years of not having an inhouse</p> <p>17 attorney. They had been accustomed to in many cases</p> <p>18 handling matters at different department levels. The</p> <p>19 COO, for example, would handle some contracts. The CFO</p> <p>20 would handle all work related to that department. My</p> <p>21 main responsibilities were really still operating the</p> <p>22 pipelines themselves, and I was starting to learn some</p> <p>23 of the corporate responsibilities, part of a publicly-</p> <p>24 traded company.</p> <p>25 Q. Midcoast was publicly-traded at the time?</p>	<p>1 Q. Is Mr. Berthelot still employed by Enbridge?</p> <p>2 A. No, he's not.</p> <p>3 Q. When did he leave?</p> <p>4 A. A year or two later. I don't know exactly.</p> <p>5 Q. So you have your law license that you obtained</p> <p>6 in 1981; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any other certifications or</p> <p>9 licenses or accreditations?</p> <p>10 A. Not law related.</p> <p>11 Q. Do you have some other in construction or --</p> <p>12 A. No. I mean, I scuba dive, I'm a pilot. I</p> <p>13 mean, other non-legally-related-type certifications.</p> <p>14 MR. CROKE: More fun.</p> <p>15 A. Fun stuff.</p> <p>16 Q. (BY MR. COFFIN) Mr. Kaitson, have you reviewed</p> <p>17 anything to prepare for this deposition?</p> <p>18 A. Yes, I have.</p> <p>19 Q. What did you look at?</p> <p>20 A. I looked through my file, met with counsel,</p> <p>21 reviewed some documents at that time.</p> <p>22 Q. How much time did you spend reviewing</p> <p>23 documents?</p> <p>24 A. Four or five hours.</p> <p>25 Q. Are you going to appear at trial of this matter</p>
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<p>1 A. That's correct.</p> <p>2 Q. Who did you report to?</p> <p>3 A. I reported -- at Midcoast Energy, I reported to</p> <p>4 the chief operating officer, Chip Berthelot,</p> <p>5 B-E-R-T-H-E-L-O-T.</p> <p>6 Q. And did you report to Mr. Berthelot up until</p> <p>7 1991 -- or, I'm sorry, 2001?</p> <p>8 A. Correct.</p> <p>9 Q. And that's when your responsibilities to report</p> <p>10 to the GM and the president were invoked or --</p> <p>11 A. At that time when Enbridge acquired Midcoast,</p> <p>12 the reporting responsibilities were to the president</p> <p>13 here locally and to the general counsel in Canada. Only</p> <p>14 recently has Enbridge reorganized somewhat and changed a</p> <p>15 few titles, so that the top position here in the United</p> <p>16 States is called general manager.</p> <p>17 Q. Okay.</p> <p>18 A. But, at that time, the top position here in the</p> <p>19 United States was the president of the partnership</p> <p>20 Enbridge Energy Partners, LP.</p> <p>21 Q. So who was it you were reporting to after</p> <p>22 Enbridge took over in 2001?</p> <p>23 A. I reported to Chip Berthelot, who was then part</p> <p>24 of Enbridge, and I also reported to Darby Wade in</p> <p>25 Canada, who was the general counsel of Enbridge, Inc.</p>	<p>1 to testify on behalf of Enbridge?</p> <p>2 A. I don't know the answer to that. I'm sorry.</p> <p>3 Q. So you were employed by Midcoast in 19 --</p> <p>4 during 1999, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And what were your responsibilities at that</p> <p>7 time?</p> <p>8 A. My title was general counsel, so I -- I had</p> <p>9 some general counsel responsibilities, which included</p> <p>10 operations of the pipeline. Some of the filings the</p> <p>11 company made I was involved in reviewing. We relied on</p> <p>12 outside counsel to a significant degree for securities</p> <p>13 matters and some corporate matters, because I didn't</p> <p>14 have significant experience in those two areas.</p> <p>15 Our employee benefits during the time</p> <p>16 period were provided by a third party, so I was not</p> <p>17 involved in employee benefit-type services.</p> <p>18 Q. Did you manage the litigation?</p> <p>19 A. Correct, yes, I did.</p> <p>20 Q. Okay. I assume you had some responsibilities</p> <p>21 related to acquisitions?</p> <p>22 A. Yes. I was involved in, I believe, every one</p> <p>23 of the acquisitions, to some degree or the other; but</p> <p>24 being the only attorney, I also had primary</p> <p>25 responsibilities for asset operations.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. In 1999, you were the only attorney still?</p> <p>2 A. Correct.</p> <p>3 Q. Can you give me a general description of what</p> <p>4 Midcoast did back in 1999 so far as the business?</p> <p>5 A. Midcoast is a pipeline company. Their primary</p> <p>6 area of concentration was construction and operation of</p> <p>7 pipelines, to a very small degree purchase and sale</p> <p>8 of -- of natural gas, but it was only a gas -- only gas</p> <p>9 pipelines. We had plants that processed the gas and did</p> <p>10 some treating of the gas, but it was a transportation</p> <p>11 and transportation services type company.</p> <p>12 Q. Who were Midcoast's competitors during that</p> <p>13 time period, do you recall?</p> <p>14 A. Oh, we were a small company, so I -- I would</p> <p>15 say our competitors would have been a small company.</p> <p>16 The only one that comes to mind immediately is, oh, a</p> <p>17 company called AlaTenn, which was another interstate</p> <p>18 pipeline company of about the same size as Midcoast.</p> <p>19 Q. Spell that for me, please.</p> <p>20 A. A-L-A-T-E-N-N. Actually, it's AlaTenn Pipeline</p> <p>21 Company I believe at the time.</p> <p>22 Let me back up. I'm sorry, you asked</p> <p>23 Midcoast, didn't you?</p> <p>24 Q. Yes, I did.</p> <p>25 A. Okay. AlaTenn was acquired by Midcoast.</p>	<p style="text-align: right;">Page 28</p> <p>1 mode back in '99 or prior to that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And what were the goals of the company?</p> <p>4 What did they seek to -- to accomplish with</p> <p>5 acquisitions?</p> <p>6 A. The plan was to grow the company either to</p> <p>7 become a significant self-sustaining entity or to grow the</p> <p>8 company and then the principals to sell the company to</p> <p>9 their benefit.</p> <p>10 Q. Okay. Who were the principals at the time?</p> <p>11 A. Three individuals: Dan Tutcher; Steve Herbst,</p> <p>12 H-E-R-B-S-T; and Kenneth Holmes.</p> <p>13 Q. Mr. Tutcher was the CEO at the time?</p> <p>14 A. Correct.</p> <p>15 Q. Okay.</p> <p>16 A. It was a publicly-traded company, but those</p> <p>17 three were the founders and the principals of the</p> <p>18 company.</p> <p>19 Q. They had the -- the significant share of stock</p> <p>20 in the company, I would assume?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And Mr. Herbst, was he employed by the</p> <p>23 company? Steve.</p> <p>24 A. I don't believe he was an -- I'm not sure.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Uh-huh.</p> <p>2 A. Who would be considered Midcoast's competition</p> <p>3 or Midcoast's -- I wouldn't know. I'm sorry.</p> <p>4 Q. Okay. So your response to the -- AlaTenn was a</p> <p>5 company that was acquired by Midcoast?</p> <p>6 A. Correct.</p> <p>7 Q. Okay.</p> <p>8 A. We viewed that as a competitor until the</p> <p>9 acquisition.</p> <p>10 Q. I see.</p> <p>11 A. Same as Midcoast was viewed -- was a competitor</p> <p>12 with Mid Louisiana Gas Company until it acquired that</p> <p>13 company. So the three companies were somewhat all the</p> <p>14 same size; then Midcoast acquired both of them. So, as</p> <p>15 I said, at one time they were competitors, but then they</p> <p>16 were consolidated.</p> <p>17 Q. When were those companies acquired?</p> <p>18 A. In 1997.</p> <p>19 Q. Were those -- do you recall if those were asset</p> <p>20 purchases or stock purchases?</p> <p>21 A. AlaTenn I do not recall. Mid -- Mid-La was a</p> <p>22 merger, so it would be more of a stock acquisition.</p> <p>23 Q. Now, was the -- has Midcoast been -- or let me</p> <p>24 back up.</p> <p>25 Was the company in an acquisition-type</p>	<p style="text-align: right;">Page 29</p> <p>1 A. I recall that he was an officer of the company,</p> <p>2 which makes me think that he was an employee, but I</p> <p>3 don't know that he in fact was an employee.</p> <p>4 Q. Okay.</p> <p>5 A. He was independently wealthy and I'm not sure</p> <p>6 he needed the employee status as much as just involved</p> <p>7 in the company.</p> <p>8 Q. Okay. How about Mr. Holmes?</p> <p>9 A. Mr. Holmes was an employee at one time. He had</p> <p>10 already retired when I joined company in '97, but he</p> <p>11 still owned significant stock and was one of the</p> <p>12 founders.</p> <p>13 Q. So you began working with Midcoast in 1997; is</p> <p>14 that correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. On these acquisitions of -- you said</p> <p>17 Mid-La and that's short for --</p> <p>18 A. Mid Louisiana Gas Company.</p> <p>19 Q. Okay. And AlaTenn?</p> <p>20 A. AlaTenn.</p> <p>21 Q. Okay. In those accusations, what were your --</p> <p>22 what did you do for the company?</p> <p>23 A. Well, the first acquisition was prior to my</p> <p>24 joining the company. The AlaTenn acquisition was in</p> <p>25 early 1997 --</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. Okay.</p> <p>2 A. -- and I was not part of the company then. The</p> <p>3 Mid-La acquisition, I was the acquired company; so I</p> <p>4 actually joined Midcoast as part of that acquisition in</p> <p>5 late 1997.</p> <p>6 Q. Okay. Did Midcoast acquire any other companies</p> <p>7 from 1997 to 1999, that you recall?</p> <p>8 A. Yes, there were -- I don't recall exactly how</p> <p>9 many, but there were other acquisitions during that time</p> <p>10 period.</p> <p>11 Q. Okay. And, generally, were your duties the</p> <p>12 same with regard to each acquisition that occurred?</p> <p>13 A. No, they would vary, depending on the size of</p> <p>14 the transaction would somewhat impact what my</p> <p>15 responsibilities were. On the smaller transactions, I</p> <p>16 would be more involved in perhaps all stages of the</p> <p>17 process; whereas, larger transactions that would take</p> <p>18 longer time, I knew I still had my day-to-day</p> <p>19 operational responsibilities, so relied more on outside</p> <p>20 counsel.</p> <p>21 Q. And when you engaged outside counsel, can you</p> <p>22 tell me briefly what you would engage them to do?</p> <p>23 A. Brought them in to really lead the acquisition,</p> <p>24 reporting to me, obviously, and to the rest of the</p> <p>25 management team, but relied on them heavily. I mean, it</p>	<p style="text-align: right;">Page 32</p> <p>1 an asset purchase, are you still concerned with lawsuits</p> <p>2 that might be -- that could possibly be out there?</p> <p>3 A. We would be. Some of those acquisitions we</p> <p>4 would inherit the lawsuit; some of those acquisitions we</p> <p>5 would not inherit the lawsuit. It really depended on</p> <p>6 the type of lawsuit that was involved. For example, if</p> <p>7 the lawsuit involved the pipelines at the wrong level.</p> <p>8 The pipeline was required to be, you know, pursuant to</p> <p>9 the contract, 36 inches or lower, and the pipeline is at</p> <p>10 32 inches, well, obviously the outcome of that lawsuit</p> <p>11 would affect the assets we were buying. So, therefore,</p> <p>12 we would want that lawsuit -- would predict what the</p> <p>13 risk is or probability and we would want to manage that</p> <p>14 lawsuit, knowing that the final outcome of that lawsuit</p> <p>15 could affect our assets.</p> <p>16 Other lawsuits, there were, I don't know,</p> <p>17 employee discrimination case or slip-and-fall case or</p> <p>18 some type of damage case where you damaged someone's</p> <p>19 pole or their fence line. We would not be concerned</p> <p>20 about those types of lawsuits because they did not</p> <p>21 impact the assets or the operation of the assets going</p> <p>22 forward.</p> <p>23 Q. Okay. Now, with those type, the second area of</p> <p>24 suits you described, employee discrimination, slip and</p> <p>25 fall, I guess general tort cases, damage cases, did</p>
<p style="text-align: right;">Page 31</p> <p>1 would be a longer transaction.</p> <p>2 Q. Okay. On the smaller acquisitions you</p> <p>3 mentioned -- do you recall how many acquisitions</p> <p>4 occurred in between 1997 and 1999?</p> <p>5 A. I don't.</p> <p>6 Q. Okay. Was it five or more?</p> <p>7 A. I would say half a dozen, perhaps more.</p> <p>8 Q. Okay. And on the smaller ones that you were</p> <p>9 more involved, could you -- could you tell me, not being</p> <p>10 an inhouse, never having any inhouse experience or any</p> <p>11 transactional attorney, what generally were your duties</p> <p>12 on a more specific basis?</p> <p>13 A. Most of those were small transactions. We</p> <p>14 would be buying a few miles of pipe as opposed to</p> <p>15 hundreds of miles of pipe. Part of the due diligence</p> <p>16 requirement would be actually going to the seller's</p> <p>17 office and reviewing the documents. On asset purchases,</p> <p>18 we would have to go through and confirm that the assets</p> <p>19 we were acquiring were in fact assets that they owned</p> <p>20 and acquired. We'd have to identify what lawsuits or</p> <p>21 threats or deficiencies existed with the assets,</p> <p>22 letters, notifications from state agencies, anything</p> <p>23 that was problematic as far as our acquisition would be</p> <p>24 concerned.</p> <p>25 Q. Now, let me stop you right there. Now, if it's</p>	<p style="text-align: right;">Page 33</p> <p>1 those necessarily follow the assets by operation of law</p> <p>2 or how does that work?</p> <p>3 A. No, they do not. In an asset transaction, they</p> <p>4 do not follow the assets.</p> <p>5 Q. So that's why you didn't -- you wouldn't have</p> <p>6 to calculate the risks of those being out there and work</p> <p>7 those into the purchase price, I would assume?</p> <p>8 A. Correct.</p> <p>9 Q. And we're talking about acquisitions versus</p> <p>10 stock, stock purchases, right?</p> <p>11 A. Correct.</p> <p>12 Q. All right. And then -- okay. You were</p> <p>13 continuing on with the due diligence. You reviewed</p> <p>14 documents, looked at the possibility of litigation,</p> <p>15 lawsuits and threats and things like that. What else</p> <p>16 would you do?</p> <p>17 A. I'd actually be involved in the acquisition</p> <p>18 document, the purchase sale agreement, whether it was an</p> <p>19 asset purchase sale agreement or whatever title it may</p> <p>20 have. The actual conveyance documents themselves, which</p> <p>21 would be assignments and bill of sales and those types</p> <p>22 of documents, and the schedules attached to them to make</p> <p>23 sure they correctly identify exactly what we're</p> <p>24 purchasing, identify what liability we're accepting as</p> <p>25 part of that. They're really -- we call them disclosure</p>

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<p style="text-align: right;">Page 34</p> <p>1 schedules, so we know exactly what we're buying. 2 Q. And when you say you were involved in those 3 smaller deals, you were actually drafting those 4 personally yourself? 5 A. We would be drafting them or in many cases the 6 seller is the one that typically drafts those. When 7 someone is selling assets, typically they put together a 8 data room and a pro forma or a proposed conveyance 9 document, an asset sale agreement, and we would go in 10 and actually have to review those and comment on those. 11 Q. Okay. 12 A. Usually the sellers set the ground rules. 13 Q. Okay. And forgive me if -- if -- because I 14 don't remember. You said on the smaller transactions 15 you were more involved and the larger transactions you 16 would hire outside counsel to assist you or take the 17 lead, I think you said? 18 A. Correct, yes. 19 Q. And so tell me, what would outside counsel do 20 in these larger deals? 21 A. Outside counsel would take the lead on the 22 purchase sale agreement and the conveyance documents, 23 and I would be more involved in the due diligence 24 portion of it, which would be reviewing the documents, 25 the contracts we were acquiring, reviewing the</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. How many of the larger acquisitions were 2 you involved in from '97 to '99? 3 A. I don't recall the number, I'm sorry. I did 4 not look at that in preparation, so... 5 Q. Is that what we said earlier, it was half a 6 dozen or so or was that total? 7 A. Half a dozen total, I would say. 8 Q. And of those half a dozen, do you recall -- and 9 I'm sorry if I've already asked this question -- how 10 many were asset purchase and how many would have been 11 stock purchases? Was there a -- 12 A. The majority of those, if not all of them, 13 would have been asset purchases. I was much more 14 inclined to promote asset acquisitions and not stock 15 acquisitions. 16 Q. And why is that? 17 A. Unknown liability that goes with the stock 18 purchase. Any time you purchase the stock of a company, 19 you don't know what they did in the past and didn't do 20 and you don't know what acquisitions they had or if they 21 drilled a well somewhere that was leaking or any number 22 of unknown liabilities that come back to haunt you 23 later. 24 Q. Any other reasons why you prefer an asset 25 purchase over a stock purchase?</p>
<p style="text-align: right;">Page 35</p> <p>1 right-of-way records, reviewing the litigation. I would 2 take a more active role in the -- in the review process 3 to help us analyze the acquisition and outside counsel 4 would take a much more active role, leadership role in 5 the more complicated documents. 6 Q. Now, you mentioned the data room, and I've seen 7 documents in this case showing that, with regard to the 8 sale of the Kansas Pipeline assets, that they had a data 9 room, at least an index that I saw. And periodically 10 you or somebody else would make a request for documents 11 from there and then the seller would transmit them to 12 you? 13 A. Correct. 14 Q. Is it typical to have a document -- a document 15 room and have an index like that, that the seller or the 16 buyer, the buyer will look at and evaluate what 17 documents it wants? 18 A. Depends on the size of the transaction. 19 Smaller transactions you walk into a room and there 20 might be two folders, you know, six inches each, and 21 that's everything that was involved with it. Larger 22 transactions that involve more documents, indexes would 23 be prepared of those documents so you knew what 24 categories and what specific documents were included in 25 that transaction.</p>	<p style="text-align: right;">Page 37</p> <p>1 A. I know exactly what I'm getting on an asset 2 purchase, because if it's not on the schedule and it's 3 not in the disclosure list and it's not an attachment to 4 a document, I'm not getting it. 5 Q. Now, was there any discussion within Midcoast 6 at the time that there is a or was there a perception at 7 all that it was better, more tax benefits with an asset 8 purchase versus a stock purchase? 9 A. I kept totally away from tax. 10 Q. Okay. 11 A. I didn't have any tax background, so... 12 Q. Who was primarily making tax decisions from '97 13 to '99? 14 A. Richard Robert was our chief financial officer, 15 in connection with whatever consultants he would use. I 16 know Price Waterhouse was our auditor at the time. 17 Q. So, when you were beginning working for 18 Midcoast, was Price Waterhouse already on board as a 19 consultant or an auditor at the time? 20 A. Yes. 21 Q. Okay. 22 A. They were the auditors for Midcoast at the 23 time. 24 Q. Were they doing -- so you said they were 25 doing -- when you say auditor, you mean financial</p>

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<p style="text-align: right;">Page 38</p> <p>1 statement preparation type things?</p> <p>2 A. Correct, in connection with publicly-filed</p> <p>3 documents and all the annual reviews and things,</p> <p>4 whatever other consulting services they provided.</p> <p>5 Q. Were they doing the tax work as well?</p> <p>6 A. I don't know. I -- I think so, but I don't</p> <p>7 know.</p> <p>8 Q. Did you deal with any of the PWC people? I'll</p> <p>9 say PWC for short, if that's all right.</p> <p>10 A. Very rarely. On occasions I would -- I would</p> <p>11 speak with an individual with some specific matter.</p> <p>12 Typically, it would involve corporate structure and who</p> <p>13 owned what, or if we were acquiring an asset, which one</p> <p>14 of our subsidiary companies would be the most</p> <p>15 appropriate fit for that acquisition.</p> <p>16 When you acquire assets, if you have 15</p> <p>17 different companies, you still have to decide if you're</p> <p>18 going to form a new company to acquire those assets or</p> <p>19 if you're going to put those assets into one of your</p> <p>20 existing companies.</p> <p>21 Q. Okay. So was PWC consulted then on a -- when</p> <p>22 you were looking at acquisitions?</p> <p>23 A. Once again, Richard Robert would have been the</p> <p>24 one that made the decision if he would consult them or</p> <p>25 not.</p>	<p style="text-align: right;">Page 40</p> <p>1 or the rates quoted in the contract matched with the</p> <p>2 income so that we knew we were getting contracts that --</p> <p>3 that supported the income projections.</p> <p>4 Q. And this was -- this was -- those things were</p> <p>5 typical of these larger deals that Midcoast was involved</p> <p>6 in?</p> <p>7 A. Well, they were typical of smaller ones as</p> <p>8 well. Yes, all transactions require those group of</p> <p>9 folks to some degree or another.</p> <p>10 Q. Yes.</p> <p>11 A. Smaller transactions, many times they would</p> <p>12 provide us with a folder that we could actually have the</p> <p>13 documents and disperse them among the company and not</p> <p>14 have to go to their offices. Larger transactions, they</p> <p>15 didn't want to copy that large a quantity, so we were at</p> <p>16 their offices reviewing information.</p> <p>17 Q. I would assume you would categorize the</p> <p>18 purchase of the Kansas Pipeline assets as a large</p> <p>19 acquisition?</p> <p>20 A. Yes.</p> <p>21 Q. As far as the assets that Midcoast was</p> <p>22 acquiring in any of these large acquisitions, what --</p> <p>23 how would you typically verify a certain asset existed,</p> <p>24 a certain pipeline existed? Was there -- were there</p> <p>25 documents or --</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Okay. Do you recall if they were ever</p> <p>2 consulted? It sounded like you were describing them</p> <p>3 just a minute ago when you said trying to determine,</p> <p>4 what you did you say, corporate form?</p> <p>5 A. Yeah, I know that I had at least two</p> <p>6 transactions that I had interaction with the Price</p> <p>7 Waterhouse folks on where the assets should go, as far</p> <p>8 as which one of our entities should -- should own those.</p> <p>9 The other transactions, I don't recall discussing</p> <p>10 anything with them, and any discussions along those</p> <p>11 lines would have been, you know, between Richard Robert</p> <p>12 and them.</p> <p>13 Q. Now, when you were conducting due diligence on</p> <p>14 some of the larger deals, who else would be involved in</p> <p>15 the -- in the company?</p> <p>16 A. Oh, my. We would have operations folks there</p> <p>17 to look at the pipelines themselves, the integrity</p> <p>18 records of the pipeline, inspection reports dealing with</p> <p>19 the pipelines, the various filings that the pipelines</p> <p>20 would make. We would have regulatory folks there,</p> <p>21 either state regulatory folks or FERC regulatory folks,</p> <p>22 depending on who regulated the pipeline. We would have</p> <p>23 contract administration people present to review the</p> <p>24 contracts and summarize them. We would have accounting</p> <p>25 and finance people to reconcile that the contract rate</p>	<p style="text-align: right;">Page 41</p> <p>1 A. The existence of a pipeline, you would identify</p> <p>2 it through the gas flow. You would have statements that</p> <p>3 show gas coming into a pipeline at what we call receipt</p> <p>4 points; you would show the gas that goes out the</p> <p>5 pipeline at what we call delivery points. Our</p> <p>6 operations folks would actually go out and visibly drive</p> <p>7 the route of the pipelines or we might fly the pipelines</p> <p>8 to confirm that you don't see dead grass over a</p> <p>9 pipeline, which indicates there's a leak, those types of</p> <p>10 matters, to see the condition of the ground, if you</p> <p>11 will, at these various assets. If you go to a station,</p> <p>12 a compressor station or a treating plant and the dirt is</p> <p>13 all black, there's probably some problem with that.</p> <p>14 Q. Uh-huh.</p> <p>15 A. So, those types of matters we would actually</p> <p>16 confirm with paper, as well as the field review. And</p> <p>17 then my responsibility would be to confirm that the</p> <p>18 actual title was owned by the seller. A common</p> <p>19 discussion point was the seller would not want to</p> <p>20 represent they owned the assets. They just -- I'll</p> <p>21 convey you the assets, period. We always wanted a</p> <p>22 statement saying that you will convey us all of the</p> <p>23 assets and that you have title to them.</p> <p>24 So, that's part of the due diligence, to</p> <p>25 confirm that the -- they acquired the assets, so I would</p>

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<p style="text-align: right;">Page 42</p> <p>1 need to look at the documents. On an acquisition, we 2 would typically have someone review the courthouse 3 records to make sure those documents were filed at the 4 courthouse, to show that they in fact were the owners 5 and that they had not sold them to someone else prior to 6 us acquiring them. 7 Q. Okay. And then you mentioned earlier inherited 8 liabilities. How would you perform due diligence on 9 inherited liabilities? You know, how would you assess, 10 I guess, the risk of liabilities that might be inherited 11 from an asset purchase? 12 A. Well, asset purchase we didn't worry about the 13 liabilities because they were all on a schedule. 14 Q. Okay. 15 A. We knew exactly what liability we were taking, 16 what lawsuits existed. And you -- like I said, I 17 believe I said earlier, if it's not on the schedule, we 18 are not acquiring it, and that would limit the 19 liabilities as well. 20 Now, the only exception might be a 21 contract, for example. If we had a contracted assigned 22 to us, sometimes we would have the liabilities 23 associated with that contract, sometimes we would not. 24 That would all be part of the negotiations. We 25 obviously would prefer that we pick the transaction</p>	<p style="text-align: right;">Page 44</p> <p>1 income was, match it up with the balance sheets or the 2 financial statements. 3 Q. That was Mr. Robert? 4 A. Correct, and his folks. 5 Q. Okay. And the same thing with expense 6 projections, then, I assume, did you have any -- 7 A. Correct. I would do a small degree of expense 8 projections related to the legal matters. If we were 9 inheriting a lawsuit or acquiring assets with a lawsuit, 10 I would give a projection on what I assumed, estimated 11 would be the costs going forward of that. 12 Q. Uh-huh. 13 A. If there were other liabilities out there, I 14 might put a number on it or a risk factor, probably of 15 success of a lawsuit, to try and give us an idea of how 16 much we might pay out if we lost this lawsuit. 17 Q. Was there any other due diligence that may have 18 occurred that we haven't covered? 19 A. Nothing comes to mind. There may be, but 20 nothing comes to mind right now. 21 Q. Just whatever, whatever the transaction posed, 22 I guess you would analyze it? 23 A. Yeah. Our job, our job was to find out what 24 we're buying, what we're going to own at the end of the 25 day, what liability goes with those, with those</p>
<p style="text-align: right;">Page 43</p> <p>1 closing date and all liability associated with the 2 contract prior to that belonged to the seller and any 3 liability subsequent to that went with the buyer. That 4 was our preference, but it was always a negotiating 5 point as to what the actual timeline was. Sellers 6 prefer you take all liability and they walk away 7 scot-free; we preferred they kept the liability up until 8 the closing date. 9 Q. In a stock purchase, where you did inherit 10 liabilities, how did you go out and assess the risks 11 associated with those? 12 A. We would -- we would look through the minute 13 books to identify what acquisitions were listed in the 14 minute books, ask for supporting documents for those 15 transactions. We would try to identify any other 16 documents, any companies that were merged into any 17 entities that we were acquiring, any assets that they 18 acquired, anything that was assigned to them. It's 19 virtually impossible to get it all done on stock 20 transactions. 21 Q. And then income projections, what kind of 22 things did you do as far as due diligence to verify 23 those? 24 A. I did zero. That was all up to the financial 25 folks to do the income projections and what the contract</p>	<p style="text-align: right;">Page 45</p> <p>1 acquisitions. 2 Q. Was there ever any -- any reason you needed to 3 look into who was selling the company or the assets to 4 you, the management of the company? 5 A. Not that I recall. 6 Q. Okay. So, just generally speaking -- okay. 7 Well, how about -- how about owners of the company, was 8 there any reason to look into the owners of the company? 9 A. We would typically have companies that we would 10 prefer to do business with, companies that we would keep 11 away from. From that standpoint, some companies were 12 very forthcoming with information, they would freely and 13 openly give you all documents. There were no ghosts in 14 the closet or nothing to be concerned about. And there 15 were other folks that had reputations of holding back. 16 If you don't ask for it, I'm not going to give it to 17 you. 18 So, we had folks that we preferred to do 19 business with and others that we were more cautious of. 20 So I guess we did have an opinion or maybe some concerns 21 at different times with different companies we 22 interacted with. 23 Q. Okay. So, once the due diligence step was 24 completed, what was generally the next step in these 25 acquisitions?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A. You're usually going down two paths at once. 2 You're going down a due diligence path and you're also 3 going down a path of negotiating the transaction 4 documents, the acquisition documents. Typically you go 5 down both those processes at the same time. 6 At some stage during the process, the 7 seller typically wants an offer. They want to know what 8 we're willing to pay, and they typically would want a 9 marked-up document, so that they knew what types of 10 terms and conditions would be contained in the 11 documents. Are we willing to accept liability, yes or 12 no. Is the closing date the date where seller keeps 13 previous liability, we take liability. That's the 14 purpose of the -- of marking up the documents, so that 15 we knew and the seller knew and they could analyze the 16 different bids they received. 17 Q. Okay. And then a letter of intent, can you 18 just generally describe what that is? 19 A. Letter of intent is not a whole lot different 20 than simply submitting a bid to someone. A letter of 21 intent can be binding, where you're going to -- you 22 know, it is a summary of what the actual final deal will 23 look like and all the terms and conditions in it you're 24 bound by. It may be a bid subject to certain things you 25 still have to complete.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Sellers obviously would take the assets off the 2 market if you submitted a bid to them and they liked 3 your price. So it -- sellers would then say we will 4 take the assets off the market, we'll negotiate 5 exclusively with you, and here's the price. And if at 6 the end of the day, you decide you just don't want to 7 do, then here's the penalty, if you will, here's how 8 much money you lose, or I would -- I guess the seller 9 would lose by taking the assets off the market having to 10 go back and redo all the due diligence negotiations and 11 everything, so... 12 Q. Okay. If you'll take Binder No. 1 there -- 13 A. Okay. 14 Q. -- right there. That entire binder is going to 15 be Exhibit No. 1. They're all Bates stamped and we'll 16 go through them, some of them. I'll refer to the Bates 17 stamps on them. 18 A. Okay. 19 Q. Yours is not tabbed and I apologize, but we can 20 get through -- to the document quickly, I think, with 21 the Bates stamp numbers. 22 The first -- 23 MR. COFFIN: I'm sorry, the Exhibit No. 1, 24 Karl, is the sale of the partnership interests in Kansas 25 Pipeline Company.</p>
<p style="text-align: right;">Page 47</p> <p>1 In transactions, it's -- it's not uncommon 2 for us to submit a bid and to continue to do due 3 diligence. Timing, the number of documents involved, 4 how many resources we're able to -- to contribute to 5 towards that due diligence, we would -- we would at 6 times submit a bid, but indicate in the bid letter that 7 we had not completed due diligence. We were continuing 8 to do due diligence or work on it, subject to 9 satisfactory review of some information or completion. 10 Q. And the letter of intent, is it typically -- I 11 it drafted? It could be drafted in the middle of due 12 diligence or before due diligence or does it just depend 13 on the transaction? 14 A. It depends on the seller. Some sellers provide 15 you with a form up front and say here's the conveyance 16 documents, here's the form of the letter of intent. 17 Smaller transactions, maybe they would not have a form, 18 just say give us a bid. We would write it up and put 19 whatever contingencies we wanted in there. There were 20 no hard and fast rules. 21 Q. Okay. Now, a break-up fee, is that a term of 22 art in corporate acquisitions? 23 A. Yeah, it's somewhat self-descriptive, I would 24 say. 25 Q. And just generally describe what that is.</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. STERN: Okay. 2 Q. (BY MR. COFFIN) Mr. Kaitson, I'll represent to 3 you that this document, this entire Exhibit 1, was 4 produced by your counsel in this litigation. Are you 5 familiar with this binder? 6 A. Not this binder, but this page does look like 7 something I've seen before, yes. 8 Q. Okay. Now, is this what would be called a 9 closing binder in a transaction? 10 A. Let me look through it. I -- 11 Q. Okay. Let me give you mine, which probably 12 more resembles what your counsel gave us. It has tabs 13 and things like that. And then hand it back to me, if 14 you would. 15 A. Okay. I didn't look at all the documents, but, 16 yes, that's traditionally a closing binder -- 17 Q. Okay. 18 A. -- or a closing book. 19 Q. Closing book is what it's called, okay. 20 And, generally, when is this book 21 assembled, as far as related to the -- the timing of the 22 transactions? Is it after, right after the transaction, 23 or the documents come trickling in later and you 24 assemble the book? 25 A. I've never assembled one of these books.</p>

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<p>1 Q. Okay. Who is responsible for assembling these 2 books? 3 A. Typically, outside counsel would be responsible 4 for those. 5 Q. Okay. 6 A. Small transactions, there would only be two or 7 three tabs. 8 Q. I see. So -- 9 A. But, yeah, the books cannot be assembled until 10 after all the documents are signed and after the closing 11 has occurred. 12 Q. Okay. And, so, Mr. Chachere -- 13 A. Chachere. 14 Q. -- Chachere, he was the outside one on this 15 particular transaction; is that correct? 16 A. Yes, he was one of the outside counsel. 17 Q. Who would be the other? 18 A. Bernie Foster would be another counsel we used 19 for FERC matters. I think those are the only two. 20 Q. Okay. So, would Mr. Chachere's office assemble 21 this binder and transmit it to you? 22 A. Perhaps. Either the seller or the buyer's 23 counsel prepared these, the binders. So I don't know if 24 Mr. Chachere prepared this or if the seller's counsel 25 prepared this; but one of the two typically takes the</p>	<p>1 220 -- let me back up. Would this be considered a 2 letter of intent dated September 30, 1999? 3 A. Yes. 4 Q. Okay. And back to paragraph 2 on ENB 220, I 5 guess closing was shown to occur within about 30 days, 6 is that right, October 30 of '99? 7 A. Yes, that's what it says, yes. 8 Q. Okay. Is that typical in acquisitions this 9 large, 30-day closing? 10 A. Yes, if you've completed all the due diligence 11 and various things have been negotiated, yeah. That's 12 not uncommon, yes. 13 Q. What is a -- again, in paragraph 2, what is a 14 post closing true-up? 15 A. When you close on a specific date, obviously 16 there are still some matters outstanding. On contracts, 17 for example, how much the actual gas flow might have 18 been, how much money is actually collected; so you're 19 somewhat estimating what it's going to be at that date, 20 and then over the next 30, 60, 90 days we know what the 21 real numbers were and, therefore, adjustments are made 22 to make the real numbers as opposed to estimates or 23 based on previous -- previous information. 24 Q. Is that -- is a post-closing true-up typical in 25 these types of acquisitions, large acquisitions?</p>
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<p>1 responsibility of we'll prepare the closing book for 2 everyone. 3 Q. And does the legal department within Midcoast 4 have the responsibility of maintaining these binders? 5 A. Yes, we do. 6 Q. Okay. If you'll turn to -- there are two Bates 7 numbers. We're going to use the ENB Bates numbers; 8 okay? 9 A. Uh-huh. 10 Q. 218, ENB 218. 11 A. Okay. 12 Q. And this appears to be a letter to Midcoast 13 Energy Resources from K-Pipe Holdings; is that correct? 14 A. Correct. 15 Q. And it's signed on behalf of Midcoast by Dan 16 Tutcher? 17 A. Tutcher, yes. 18 Q. And is there an initial there, C-K? 19 A. Yes, there are. 20 Q. And that's your initials? 21 A. That's correct. 22 Q. So I assume you would have reviewed this 23 document? 24 A. Yes. 25 Q. Okay. Paragraph No. 2 in this document on ENB</p>	<p>1 A. It's typical in every transaction that I have 2 been involved in. 3 Q. Okay. Paragraph 3 on the same page talks about 4 the option for the Butcher interests? 5 A. Correct. 6 Q. What were the Butcher interests? 7 A. The Butcher interest was a right to a certain 8 amount of income or certain percentage of income. 9 That's it. It applied specifically to Kansas Pipeline 10 Company, at least as I recall, revenue. 11 Q. Okay. The paragraph says, "The option for the 12 Butcher interest shall be exercisable by buyer at any 13 time on or before the expiration of three years from the 14 closing by payment of the sum of \$6,500,000 cash to 15 seller," and the seller was the K-Pipe; is that right? 16 A. Correct. 17 Q. What -- how was the \$6.5 million determined? 18 A. Just a negotiated price and value placed on it. 19 Q. Okay. Are you aware -- well, tell me, I mean, 20 how would you value this interest? 21 A. I do not know. Richard Robert and the finance 22 folks would be the ones that put values on specific 23 assets or -- 24 Q. Okay. 25 A. -- come up with the price for the asset.</p>

14 (Pages 50 to 53)

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 54</p> <p>1 Q. All right. So this was -- was this an income 2 projection that we talked about earlier, that you said 3 Mr. Robert would be responsible for? 4 A. Actually, this was an expense item and we 5 wanted to acquire it. Kansas Pipeline Company had to 6 pay a percentage of its income to this Butcher interest 7 owners; so, therefore, it was an expense for Kansas 8 Pipeline Company and we wanted to be sure that we 9 acquired this expense item so that any income Kansas 10 Pipeline paid actually ended up being paid to Enbridge. 11 Q. Okay. Well, who was the owner at the time of 12 the Butcher interest? 13 A. At which time? I'm sorry. 14 Q. At the time this letter was drafted. Because 15 I -- 16 A. September 30th, I'm not sure if it's Bishop 17 Pipeline Company or Bishop or Dennis Langley. Someone 18 of that category would have been the owner at that time 19 period. 20 Q. Not Kansas or not K-Pipe? 21 A. Correct. 22 Q. Okay. Then why is a representation in this 23 letter or why is this option mentioned in this letter of 24 intent between Midcoast and K-Pipe? It would seem it 25 would appear in the letter between Midcoast or Bishop or</p>	<p style="text-align: right;">Page 56</p> <p>1 that right? 2 A. Well, it's an expense to Kansas Pipeline 3 Company, because it's money leaving that company. 4 Q. Uh-huh. 5 A. And someone is specifically that money, and 6 that's where the revenue stream would be coming in. 7 And, as Enbridge, we wanted to be the one receiving that 8 money. 9 Q. Okay. But you were anticipating that K-Pipe 10 would own that revenue interest; is that right? 11 A. Yes, or acquire it before we acquired it from 12 them, yes. 13 Q. Okay. So, as far as you knew, or as far as 14 Midcoast knew, there was an expense going out of the 15 Butcher interest royalty or obligation paid out, and 16 then a revenue interest coming back; is that right? 17 A. Well, they're two different -- the expense goes 18 out of Kansas Pipeline Company. It was an expense to 19 Kansas Pipeline Company going to the Butcher interest. 20 Q. Uh-huh. 21 A. And then whoever owned the Butcher interest 22 received that income. 23 Q. Okay. Maybe I'm confused then. Kansas 24 Pipeline Company was the asset that Midcoast was going 25 to acquire, right?</p>
<p style="text-align: right;">Page 55</p> <p>1 Langley or another entity. 2 A. Well, this letter, we were not buying anything 3 from Bishop or Langley. This letter was simply our 4 offer or letter of intent to buy things from K-Pipe. 5 Q. Uh-huh. 6 A. So, K-Pipe would have to acquire this interest 7 in order to be able to sell it to us. 8 Q. Oh, okay. So you're saying K-Pipe was going to 9 acquire it and then you were going to buy it from them? 10 A. Yes. We could only acquire it if they owned 11 it. 12 Q. Okay. But you said it's an expense item, not 13 an income item. So my question is: why would you be 14 paying money for something that's an obligation to pay 15 an expense? 16 A. Well, it was an expense for Kansas Pipeline 17 Company because it was money going out of the company. 18 Q. Uh-huh. 19 A. So we wanted to buy out that, purchase, acquire 20 that revenue stream. I mean, it has value. 21 Q. Okay. 22 A. Someone is receiving money from Kansas Pipeline 23 Company. 24 Q. So it is -- it's a -- it's an expense, but, on 25 the other hand, it's a revenue stream coming back; is</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Okay. Correct. 2 Q. Okay. So there's an expense that Kansas 3 Pipeline Company would have or an obligation to pay? 4 A. Yes. 5 Q. By somebody else, which you anticipated K-Pipe 6 would own in the end, a revenue interest coming back in, 7 is that right, of the same amount? 8 A. To the owner of Butcher interest, yes. 9 Q. Okay. So it seems to me like it's a wash? 10 A. Well, it's only a wash if the same company owns 11 both sides of it. If the same company owns the expense 12 going out and the same company owns the income coming 13 in, then this would be a wash, yes. 14 Q. Okay. 15 A. But if a different company is receiving the 16 income, then it's not a wash; it's an expense. 17 Q. Okay. 18 A. I'm not sure if that's the right accounting 19 term, but... 20 Q. So, at the time, did K-Pipe own -- at the time 21 K-Pipe would be selling you the assets, did it have both 22 the obligation to pay and the revenue interest coming 23 back? 24 A. Well, this paragraph anticipates that K-Pipe 25 would own the Butcher interest.</p>

15 (Pages 54 to 57)

Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 58</p> <p>1 Q. That's the revenue stream?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 A. So they would have the revenue coming in. And</p> <p>5 then in the first paragraph, it lists Kansas Pipeline</p> <p>6 Company as one of the assets that Midcoast would be</p> <p>7 acquiring from K-Pipe, and that's where the expense</p> <p>8 would have been.</p> <p>9 Q. So -- so it's true then that K-Pipe, at the</p> <p>10 time this was executed, you knew that K-Pipe would both</p> <p>11 have the obligation to pay and the revenue interest</p> <p>12 coming back?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. On paragraph 4, it says, "The</p> <p>15 consummation of this tran -- of the transaction shall be</p> <p>16 contingent, among other things, on the negotiation,</p> <p>17 execution and delivery of the definitive agreement and</p> <p>18 upon the completion by buyer of a satisfactory review of</p> <p>19 the financial and legal aspects of the business,</p> <p>20 properties, assets and liabilities pertaining to the</p> <p>21 transaction, and buyer's acceptance of the final terms</p> <p>22 and provisions of the assumed obligations, which are</p> <p>23 currently being negotiated between seller and Dennis M.</p> <p>24 Langley."</p> <p>25 And it says, "Seller agrees to provide</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes. That's what it says, yes.</p> <p>2 Q. So was it important to Midcoast to find out</p> <p>3 what liabilities were being assumed by K-Pipe in their</p> <p>4 stock purchase transaction?</p> <p>5 A. Well, it was important for us to know what</p> <p>6 liabilities we were assuming. And, typically, as part</p> <p>7 of the due diligence, you know what kind of liabilities</p> <p>8 the seller assumed when they acquired the assets.</p> <p>9 Q. Okay. And then the last sentence in that</p> <p>10 paragraph which I already read, "Seller agrees to</p> <p>11 provide buyer and its representative full access and</p> <p>12 opportunity to examine the books, records, contracts and</p> <p>13 other documentation relating to the assets." So, whose</p> <p>14 books and records, contracts, et cetera, were -- was</p> <p>15 the -- that provision referencing, was it Langley's or</p> <p>16 was it K-Pipe's?</p> <p>17 A. Well, at the time of this document, the assets</p> <p>18 were still owned by Langley. K-Pipe had not acquired</p> <p>19 them yet. But we were -- we wanted to look at all the</p> <p>20 of the documents associated with the assets.</p> <p>21 Q. Is that what that --</p> <p>22 A. Regarding -- yeah, sorry.</p> <p>23 Q. So that would have been Langley's books and</p> <p>24 records, contracts, and other documentation?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 59</p> <p>1 buyer and its representatives full access and</p> <p>2 opportunity to examine the books, records, contracts and</p> <p>3 other documentation related to the assets." Is that</p> <p>4 right?</p> <p>5 A. Correct, that's what it says.</p> <p>6 Q. Okay. Why was the transaction contingent on</p> <p>7 the buyer's acceptance of the final terms and provisions</p> <p>8 of the assumed obligations?</p> <p>9 A. When you buy something, you want to know</p> <p>10 exactly what you're buying --</p> <p>11 Q. Uh-huh.</p> <p>12 A. -- and you want to know exactly what liability</p> <p>13 goes with what you're buying. In a typical due</p> <p>14 diligence, when we would go out and acquire the assets,</p> <p>15 we would go look at all the backup documents, make sure</p> <p>16 that they owned the assets. We would look at the</p> <p>17 documents where they acquired the assets, so we knew</p> <p>18 exactly what they acquired and knew that in fact that it</p> <p>19 was coming -- that we were -- that they had the right to</p> <p>20 transfer it to us and that they were the owners and that</p> <p>21 they were transferring it to us.</p> <p>22 Q. Okay. And as soon as the obligations go, that</p> <p>23 was a defined term which meant -- which were being</p> <p>24 negotiated between seller, which was K-Pipe and Dennis</p> <p>25 Langley at the time; is that right?</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Paragraph 5 relates to confidentiality. Why is</p> <p>2 it important to keep -- why was it important to keep</p> <p>3 this matter confidential?</p> <p>4 A. That's -- that's common in -- in all letters of</p> <p>5 intent or bids. Neither side wants other parties to</p> <p>6 know what the price is. From a seller's standpoint, the</p> <p>7 seller wants to be able to negotiate with multiple</p> <p>8 parties. They don't want one party's bid to be</p> <p>9 disclosed, because it will affect how they negotiate.</p> <p>10 From a buyer's standpoint, you don't want to bid against</p> <p>11 yourself, so you want your price to be kept confidential</p> <p>12 so you are in a fair bidding process.</p> <p>13 Q. Okay.</p> <p>14 A. That's a common provision.</p> <p>15 Q. Do you recall if there was a confidentiality</p> <p>16 letter executed?</p> <p>17 A. With whom?</p> <p>18 Q. With K-Pipe.</p> <p>19 A. I believe there was.</p> <p>20 Q. Okay. Paragraph 6, the last sentence in that</p> <p>21 paragraph on page ENB 220 of Exhibit 1, it says, "Seller</p> <p>22 and buyer shall promptly file the necessary</p> <p>23 documentation, the applications for approval under the</p> <p>24 Federal Hart-Scott-Rodino Act" -- Rodyno?</p> <p>25 A. Correct.</p>

16 (Pages 58 to 61)

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 62</p> <p>1 Q. Is it Rodyno or Rodino?</p> <p>2 A. Rodino.</p> <p>3 Q. -- "Rodino, with buyer paying all such filing</p> <p>4 fees." What is the Hart-Scott-Rodino Act?</p> <p>5 A. It is a request for the government for approval</p> <p>6 to acquire assets. It's the government's ability to</p> <p>7 prevent monopolies.</p> <p>8 Q. Uh-huh.</p> <p>9 A. If someone is too large of an owner of assets</p> <p>10 in a certain area, so that there is free trade and</p> <p>11 enterprise and competition the government then has the</p> <p>12 right to approve an acquisition or transfer of one party</p> <p>13 to another. If it's over a certain dollar amount, it</p> <p>14 requires government approval.</p> <p>15 Q. Okay. And why -- now, it's my understanding</p> <p>16 from reading the documents in this case, there's no such</p> <p>17 requirement for a stock purchase; is that right?</p> <p>18 A. That's not correct.</p> <p>19 Q. Okay.</p> <p>20 A. There is the same requirement.</p> <p>21 Q. Oh, I'm sorry.</p> <p>22 A. It's a dollar amount threshold requirement and</p> <p>23 it's also a value of the buyer and seller. There's</p> <p>24 multiple requirements or threshold amounts that are met.</p> <p>25 Q. Okay. Is -- now, do they -- when they talk</p>	<p style="text-align: right;">Page 64</p> <p>1 or 20,000? That's 20,000, isn't it?</p> <p>2 A. 20,000.</p> <p>3 Q. So, how was that amount determined?</p> <p>4 A. It's a negotiated amount.</p> <p>5 Q. Okay. And, generally, what does it encompass?</p> <p>6 If you're negotiating a break-up fee, what are you</p> <p>7 thinking about?</p> <p>8 A. Do I have other bidders waiting in line, how</p> <p>9 difficult will it be for me to find another buyer, how</p> <p>10 much time and effort have I put into this transaction,</p> <p>11 how long have the assets been off the market.</p> <p>12 Q. Okay. Do you know if those -- who negotiated</p> <p>13 the break-up fee in this case, in this particular</p> <p>14 letter, do you know?</p> <p>15 A. That would have been Richard Robert.</p> <p>16 Q. So paragraph 8 relates to the assignment of</p> <p>17 rights?</p> <p>18 A. Yes.</p> <p>19 Q. So Midcoast, at least within this letter of</p> <p>20 intent, wanted to be sure that it was getting all of</p> <p>21 K-Pipe's rights as far as the representatives --</p> <p>22 representations, warranties, covenants, et cetera, that</p> <p>23 K-Pipe got in its transaction with Bishop Group, Ltd.,</p> <p>24 right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 63</p> <p>1 about the value, are they talking about the gross value,</p> <p>2 for example, with regard to this Midcoast transaction</p> <p>3 with K-Pipe? Then they bought -- bought assets, paid</p> <p>4 cash, and then paid off some liabilities as well. So,</p> <p>5 would you take the gross amount or the net amount that's</p> <p>6 considered in whether you need to file a Hart-Scott-</p> <p>7 Rodino filing?</p> <p>8 A. My understanding, it's the gross amount.</p> <p>9 Q. Okay. Now, I take it that the purchase</p> <p>10 acquisition in this, in this case, required a</p> <p>11 Hart-Scott-Rodino filing; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you know if K-Pipe's purchase of</p> <p>14 stock from Langley required a filing as well?</p> <p>15 A. I don't know.</p> <p>16 Q. Paragraph 7, next page, ENB 221, it says, "Each</p> <p>17 party will be solely responsible for its own costs in</p> <p>18 connection with the transaction, including without</p> <p>19 limitation legal and accounting costs, provided,</p> <p>20 however, that in the event that buyer fails to execute a</p> <p>21 definitive agreement, buyer shall pay seller a break-up</p> <p>22 fee of \$25,000 at buyer's sole obligation to the</p> <p>23 seller."</p> <p>24 MR. CROKE: 20 million.</p> <p>25 Q. (BY MR. COFFIN) 20 million. Is that 20 million</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. Now, the last paragraph before the</p> <p>2 signature block, it says, "Either party may terminate</p> <p>3 this agreement at any time prior to the execution of the</p> <p>4 definitive agreements without liability." Now, when I</p> <p>5 read that, I thought that conflicted with paragraph 7.</p> <p>6 A. Well, that's a general statement, whereas</p> <p>7 paragraph 7 is a specific statement, and specific will</p> <p>8 control over general.</p> <p>9 Q. That's why I'm not a contracts lawyer.</p> <p>10 A. I just noticed paragraph 9 also. I had</p> <p>11 forgotten that was in here --</p> <p>12 Q. Uh-huh.</p> <p>13 A. -- where it says that seller covenants not to</p> <p>14 negotiate or communicate with any other potential</p> <p>15 purchaser of the assets for a period of 45 days, so that</p> <p>16 means they're taking the assets off the market for 45</p> <p>17 days, and that's one of the factors that would be</p> <p>18 considered in negotiating the break-up fee.</p> <p>19 Q. Okay. Now, at this time, though, K-Pipe, as of</p> <p>20 September 30, K-Pipe did not own any assets, did it,</p> <p>21 September 30 of '99?</p> <p>22 A. I believe they did not own the Kansas Pipeline</p> <p>23 assets at that time.</p> <p>24 Q. Okay. Go to ENB 223. It's a letter dated</p> <p>25 November 4 of 1999, from K-Pipe Holding Partners, LP, to</p>

17 (Pages 62 to 65)

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 66</p> <p>1 Mr. Dan Tutchter of Midcoast, correct?</p> <p>2 A. Yes, that's correct.</p> <p>3 Q. It looks like the signatures are on 225, signed</p> <p>4 by Alice Dill, attorney-in-fact for Jeffrey Furman, and</p> <p>5 Richard Robert signed it on behalf of Midcoast; is that</p> <p>6 right?</p> <p>7 A. That's correct.</p> <p>8 Q. What precipitated the amendment to the original</p> <p>9 letter of intent, do you recall?</p> <p>10 A. I don't, I'm sorry to say. I don't see my</p> <p>11 initials on there, so I don't recall.</p> <p>12 Q. Do you know if you reviewed the document?</p> <p>13 A. I do not know if I reviewed it.</p> <p>14 Q. If you reviewed something, would you typically</p> <p>15 see your initials on it, or would you review something</p> <p>16 and sometimes not initial it?</p> <p>17 A. Occasionally, I reviewed something and not</p> <p>18 initial it; but that's the exception.</p> <p>19 Q. Okay. Do you know who Alice Dill was?</p> <p>20 A. I do not.</p> <p>21 Q. Do you know if Midcoast had a power of attorney</p> <p>22 on file from Alice Dill on behalf of Jeffrey Furman?</p> <p>23 A. I do not know.</p> <p>24 Q. Now, paragraph 1 talks about a \$14 million</p> <p>25 escrow that calls for buyers, which is Midcoast, to</p>	<p style="text-align: right;">Page 68</p> <p>1 acquisitions? Did you have that responsibility?</p> <p>2 A. Yes, I did, with outside counsel. I tried to</p> <p>3 review all them. Sometimes it's wasn't always possible.</p> <p>4 There were times I would not be at a meeting or a</p> <p>5 session. But I did try to review all of them, yes.</p> <p>6 Q. Okay. And this is, I think, the -- this is the</p> <p>7 escrow agreement discussed in that amended letter of</p> <p>8 intent you just talked about; is that right?</p> <p>9 A. Well, I see the 14 million in here, so, yeah, I</p> <p>10 believe it is.</p> <p>11 Q. Now, how was the \$14 million determined?</p> <p>12 A. I don't know. I would not have been involved</p> <p>13 in coming up with the dollar amount.</p> <p>14 Q. Would Robert have negotiated that?</p> <p>15 A. I assume he would have or unless it went to</p> <p>16 higher level, which would have been Dan Tutchter. I</p> <p>17 would expect that a matter of that level would require</p> <p>18 Dan Tutchter's approval, maybe even the board of</p> <p>19 directors.</p> <p>20 Q. Was there a -- a threshold, dollar threshold</p> <p>21 that required approval or transactions over a dollar</p> <p>22 threshold that required approval by the board of</p> <p>23 directors within Midcoast?</p> <p>24 A. I don't recall. It's common to have that</p> <p>25 scenario, but I don't remember specifically at Midcoast.</p>
<p style="text-align: right;">Page 67</p> <p>1 deposit \$14 million to an escrow account. Do you see</p> <p>2 that?</p> <p>3 A. I do see that, yes.</p> <p>4 Q. Okay. Do you recall why that was required?</p> <p>5 A. I recall the seller having some concern that</p> <p>6 the \$20,000 wasn't a significant enough fee to hold</p> <p>7 Midcoast's feet to the fire, that they could still walk</p> <p>8 away and pay \$20,000 and not have any liability and not</p> <p>9 do the deal, and I think that they wanted more assurance</p> <p>10 that Midcoast was committed to this transaction.</p> <p>11 Q. The seller being K-Pipe, right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Turn to 227, ENB 227, please.</p> <p>14 A. Okay.</p> <p>15 Q. Did you review this? Oh, this is an escrow</p> <p>16 agreement, correct?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Between K-Pipe and Midcoast Merger Corporation,</p> <p>19 entered into on the 5th day of November, '99, correct?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Did you review this document before it was</p> <p>22 signed?</p> <p>23 A. Yes.</p> <p>24 Q. And as a general matter, did you review</p> <p>25 primarily or most of the documents that were involved in</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Who would generally make the decision of</p> <p>2 determining whether they need to seek board approval for</p> <p>3 transactions?</p> <p>4 A. Dan Tutchter, the president.</p> <p>5 Q. Okay. I assume you're aware that Midcoast or,</p> <p>6 I'm sorry, K-Pipe Merger or one of its affiliates had</p> <p>7 negotiated a same -- similar type of escrow agreement</p> <p>8 with Mr. Langley, that was a break-up fee as well, that</p> <p>9 was \$15 million; do you recall that?</p> <p>10 A. After the fact, I learned that, yes.</p> <p>11 Q. You mean after --</p> <p>12 A. After the closing of our acquisition, I learned</p> <p>13 that.</p> <p>14 Q. Okay.</p> <p>15 MR. STERN: David, we have been going</p> <p>16 almost an hour and a half.</p> <p>17 MR. COFFIN: Sure.</p> <p>18 MR. STERN: Whenever is a convenient</p> <p>19 break.</p> <p>20 MR. COFFIN: Well, let me just -- give me</p> <p>21 a couple seconds here to look at this document.</p> <p>22 MR. STERN: Sure.</p> <p>23 MR. COFFIN: I think I'm finished with it.</p> <p>24 Yeah, let's go ahead and take a break.</p> <p>25 (Recess from 10:55 a.m. to 11:06 a.m.)</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 MR. COFFIN: All right. Back on the 2 record. 3 Q. (BY MR. COFFIN) Now, with regard to -- did we 4 talk about 227, which is the escrow agreement? 5 A. Yes, we started that. 6 Q. Okay. Now, this mentions the \$14 million that 7 Midcoast was to put into escrow; is that correct? 8 A. Yes, it does. 9 Q. Which represented the new break-up fee between 10 K-Pipe and Midcoast, correct? 11 A. Yeah, I don't recall if that's the break-up fee 12 or if we get that back at the end or -- I don't recall. 13 Q. Is -- 14 A. Depositing into escrow is like a down payment. 15 Q. Okay. 16 A. Things possibly could go wrong where we would 17 get that back. We don't automatically lose that if we 18 walk away, typically. 19 Q. Now, does it differ from the break-up fee then? 20 A. It can. It can also be considered a break-up 21 fee, but it typically has other conditions in here 22 which, for example, if something goes wrong on the 23 seller's side where the seller can't sell it to you, we 24 should not lose the money under that situation. 25 Q. I see. All right.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Okay. Turn to 235. This is the asset purchase 2 agreement between K-Pipe Merger Corporation and 3 Midcoast; is that right? 4 A. Yes. 5 Q. And I believe it goes back to ENB 304; is that 6 right? 7 A. I'm sorry. ENB what? 8 Q. 304? 9 A. 304. 10 Q. And then there's an amendment after that? 11 A. That's correct. 12 Q. Okay. I assume you reviewed this document 13 before it was executed by Midcoast? 14 A. I believe I would have. It's possible that I 15 would not have reviewed the actual final document, that 16 our outside counsel may have been the one that reviewed 17 the actual final document. But I reviewed this document 18 many times in different forms, yes. 19 Q. And who would have -- so, Mr. Chachere would 20 have had primary responsibility in drafting or reviewing 21 the agreement; is that right? 22 A. Yes. Yes, he would have. 23 Q. Now, is this a case again where the seller was 24 providing the document or is Mr. Chachere providing the 25 document?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. So it's just a down payment on a house. 2 Q. Okay. So, Midcoast was on the hook then, I'd 3 say, for \$14 million if it was unable to close the 4 transaction for reasons that are set out in the escrow 5 agreement; is that right? 6 A. Yes, I'd agree with that. 7 Q. Okay. And we discussed the fact that K-Pipe 8 had a similar type agreement with Langley, which was -- 9 that was \$15 million, that you said you became aware of 10 after the transaction closed? 11 A. That's correct. 12 Q. Okay. Any idea why that would put K-Pipe 13 essentially at risk for a million dollars; is that 14 right? If -- because if Midcoast was unable to complete 15 the transaction, then K-Pipe would be unable to complete 16 the transaction with Langley; is that correct? 17 A. Yes. 18 Q. Okay. So, K-Pipe would have been on the hook 19 for a million bucks, and my question is: why wouldn't 20 have K-Pipe, if you know, negotiated a full 15 million 21 instead of just the 14 million with Midcoast? 22 A. I don't know. 23 Q. Okay. 24 A. I could guess. Maybe that's all the money we 25 had available at the time, but I don't know.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. I believe the seller provided this document. 2 Q. Okay. I want to turn to paragraph 2.5 or 3 Section 2.5. Let me see if I can -- that's on 242. 4 A. Okay. 5 Q. And this relates to the excluded assets, is 6 that right, or references the excluded assets? 7 A. Correct. 8 Q. Okay. And, generally, these assets are 9 essentially excluded from the transaction as 10 contemplated by this agreement; is that right? 11 A. Yes. 12 Q. Okay. And the first one is the Butcher 13 interest? 14 A. Correct. 15 Q. And I thought the -- well, let me back up. Who 16 would have negotiated the excluded assets on behalf of 17 Midcoast? 18 A. I assume Richard Robert would have been the 19 lead negotiator on that, with -- with Ron Chachere and 20 myself. 21 Q. Okay. Now, the Butcher interests are excluded 22 here; is that right? 23 A. That's correct. 24 Q. And -- and what was the reason for excluding 25 the Butcher interests from this asset purchase</p>

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<p style="text-align: right;">Page 74</p> <p>1 agreement?</p> <p>2 A. I remember that specifically. We didn't have</p> <p>3 the money.</p> <p>4 Q. How much money was it going to be?</p> <p>5 A. 6, 6-1/2 million dollars.</p> <p>6 Q. And you didn't have that money in cash or you</p> <p>7 didn't have the ability to go borrow the money?</p> <p>8 A. We didn't have the ability to go borrow that</p> <p>9 amount of money or didn't have it in cash. I just</p> <p>10 remember we couldn't acquire it at this time. I</p> <p>11 remember that discussion.</p> <p>12 Q. Now, is this -- so this is discussing the</p> <p>13 exclusion of the revenue interests; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, was the obligation to pay the</p> <p>16 Butcher interests, was that obligation assumed within</p> <p>17 this agreement?</p> <p>18 A. Yes. The ob -- well, the obligation existed.</p> <p>19 Whoever owned Kansas Pipeline Company had the obligation</p> <p>20 to pay out that Butcher interest, yes.</p> <p>21 Q. Okay. So, within this document that Midcoast</p> <p>22 was purchasing the Kansas Pipeline Company assets; is</p> <p>23 that right?</p> <p>24 A. Correct.</p> <p>25 Q. So with it came the obligation to pay the</p>	<p style="text-align: right;">Page 76</p> <p>1 says is held in the name of -- is it Synergy, is that</p> <p>2 how you pronounce that, or is it just Synergy Pipeline</p> <p>3 Company?</p> <p>4 A. I say it Synergy.</p> <p>5 Q. Synergy, S-Y-N-E-R-G-Y. And you don't recall</p> <p>6 why those assets were specifically excluded?</p> <p>7 A. I do not.</p> <p>8 Q. And then there are certain contract rights or</p> <p>9 litigation rights that are excluded under Item No. C; is</p> <p>10 that right?</p> <p>11 A. Right, except there's a lawsuit that's excluded</p> <p>12 as well.</p> <p>13 Q. And why was the decision made to exclude that</p> <p>14 lawsuit?</p> <p>15 A. I don't recall why.</p> <p>16 Q. Because that's a -- it's not necessarily a</p> <p>17 liability or a contingent liability at this point, is</p> <p>18 it? It's a right to sue in tort -- in an action for</p> <p>19 tort or breach of contract, right, because it's an</p> <p>20 asset?</p> <p>21 A. I believe that's correct.</p> <p>22 Q. Okay. Do you recall any -- any -- you don't</p> <p>23 recall any business reason why you would not want the</p> <p>24 ability to sue these companies?</p> <p>25 A. I don't recall that, no.</p>
<p style="text-align: right;">Page 75</p> <p>1 Butcher interests; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. But you were specifically within this</p> <p>4 document -- the revenue was specifically excluded; is</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And I thought we talked about earlier</p> <p>8 how that was a wash, because the same company is paying</p> <p>9 it who is getting it?</p> <p>10 A. Yeah, that's correct.</p> <p>11 Q. So how could you put a value of 6-1/2 or how</p> <p>12 did Midcoast put a value of 6-1/2 on the Butcher</p> <p>13 interest?</p> <p>14 A. I don't know. Like I said, Richard Robert</p> <p>15 would have been the person who determined what values go</p> <p>16 with what.</p> <p>17 Q. What was the \$10 million principal balance in</p> <p>18 the cash reserve account, Item No. B under 2.5?</p> <p>19 A. Just generally speaking, I remember there was</p> <p>20 an account that had \$10 million in it that was not part</p> <p>21 of the transaction, but I don't remember what it was or</p> <p>22 how it got there or -- it had something to do with an</p> <p>23 existing loan, but I don't remember any of those</p> <p>24 specific details.</p> <p>25 Q. Okay. Is -- and the cash reserve account it</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Do you recall if K-Pipe specifically wanted to</p> <p>2 keep those rights?</p> <p>3 A. I don't remember. I'm sorry.</p> <p>4 Q. Okay. And the Butcher interests again, do you</p> <p>5 recall if K-Pipe specifically wanted to keep that right?</p> <p>6 A. No, I recall that we wanted to acquire it, but</p> <p>7 we didn't have the money to acquire it.</p> <p>8 Q. Okay. And the \$10 million, do you -- do you</p> <p>9 recall whether K-Pipe wanted to keep that amount?</p> <p>10 A. No, I -- once again, I just remember there was</p> <p>11 a discussion on it, but I don't recall the specifics</p> <p>12 around it.</p> <p>13 Q. And then turn to ENB 306, which is the first</p> <p>14 amendment to the asset purchase agreement under Exhibit</p> <p>15 No. 1.</p> <p>16 A. Okay.</p> <p>17 Q. Have you seen this document?</p> <p>18 A. Yes.</p> <p>19 Q. And, in fact, I think if you go to 309, ENB</p> <p>20 309, it shows that -- looks like the signature page was</p> <p>21 faxed to you --</p> <p>22 A. That's correct.</p> <p>23 Q. -- by Cynthia Morelli; is that right?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. Do you remember what precipitated the amendment</p>

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<p style="text-align: right;">Page 78</p> <p>1 to the asset purchase agreement?</p> <p>2 A. I don't at this time.</p> <p>3 Q. Okay. And the document was actually</p> <p>4 executed -- well, let's see. Morelli's fax to you was</p> <p>5 dated January 24 of 2000 on ENB 309; is that right?</p> <p>6 A. That's what it says, yes.</p> <p>7 Q. So would it necessarily have been executed on</p> <p>8 or around that time?</p> <p>9 A. No, I -- I wouldn't think so. I think this is</p> <p>10 a document that we were perhaps missing and it was faxed</p> <p>11 to us at a later time.</p> <p>12 Q. Okay. If you look at the top of ENB 308, it</p> <p>13 looks like both of those dates showing, you know, fax</p> <p>14 transmission dates, both of them are in 2000?</p> <p>15 A. I see that, uh-huh.</p> <p>16 Q. Okay. And you still believe it was drafted and</p> <p>17 signed before January of 2000?</p> <p>18 If you also look at Mr. Robert's signature</p> <p>19 page on 307 --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- and at the bottom left, R-E-V, revised, I</p> <p>22 would assume, 1, 2000; is that right?</p> <p>23 A. That's what it says, uh-huh.</p> <p>24 Q. And CK, is that your initials?</p> <p>25 A. That is my initial, yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 agreed?</p> <p>2 A. Or the parties just couldn't agree on some</p> <p>3 numbers and, therefore, we agreed to extend it while we</p> <p>4 obtained better information or might have been some</p> <p>5 adjustment to some contracts that -- that weren't</p> <p>6 finalized as of yet.</p> <p>7 Q. Uh-huh.</p> <p>8 A. I don't recall why, but it appears we just</p> <p>9 extended the date to use what we call the real numbers.</p> <p>10 Q. Okay.</p> <p>11 A. I had forgotten about that.</p> <p>12 Q. All right. Turn to ENB 313. That is a letter</p> <p>13 from K-Pipe Merger Corporation to Midcoast; is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Signed by Larry Austin as president. Did you</p> <p>17 ever meet Larry Austin?</p> <p>18 A. I did not.</p> <p>19 Q. Did you know who he was?</p> <p>20 A. No.</p> <p>21 Q. Okay. And it looks like it was agreed and</p> <p>22 accepted to on the -- on 3-14 by Mr. Robert, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And this -- you might review that for a</p> <p>25 minute.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. So you would have prepared the document?</p> <p>2 A. Apparently so.</p> <p>3 Q. Okay. You don't recall why a couple months</p> <p>4 later this thing was executed?</p> <p>5 A. I do not. I --</p> <p>6 Q. What was the -- and it amends. On 306, the</p> <p>7 first amendment relates to paragraph 2.3(c)(i) of the</p> <p>8 original agreement, which was amended to read, "The</p> <p>9 seller shall submit to buyers not later than January 24,</p> <p>10 2000, its good faith estimate adjusted values revised</p> <p>11 based on any information then available to the seller."</p> <p>12 Do you recall why an adjustment needed to</p> <p>13 be made? And it looks like relatively quickly since</p> <p>14 the -- the last date that you could make a proposed</p> <p>15 adjustment was January 24, 2000.</p> <p>16 A. It appears that we changed the -- the date on</p> <p>17 when the adjusted values could be submitted.</p> <p>18 Q. What was the previous date?</p> <p>19 A. That's what I'm looking back right now.</p> <p>20 (c)(i), not more than 30 days after the true-up date.</p> <p>21 So it appears they extended the time period within which</p> <p>22 or we extended the time period within which that could</p> <p>23 occur.</p> <p>24 Q. Was it one of those situations maybe where you</p> <p>25 missed the deadline and wanted to extend it and they</p>	<p style="text-align: right;">Page 81</p> <p>1 Now, is that -- it references \$15 million</p> <p>2 that would be paid to K-Pipe as K-Pipe's sole remedy for</p> <p>3 Midcoast's failure to close?</p> <p>4 A. It does, correct.</p> <p>5 Q. Okay. Is that the same \$15 million or the same</p> <p>6 I guess what I call a break-up fee as we saw in the</p> <p>7 escrow agreement on 227? I mean, they're --</p> <p>8 A. They're the same numbers. It appears they</p> <p>9 would be.</p> <p>10 Q. Well, actually, they -- the escrow agreement on</p> <p>11 227 was 14 million and this one references 15 million in</p> <p>12 the --</p> <p>13 A. You're correct.</p> <p>14 Q. Okay.</p> <p>15 A. Yeah.</p> <p>16 Q. So, turning -- if you'll turn back to ENB 227,</p> <p>17 and while you're doing that, I'll just talk, it looks</p> <p>18 like they were executed -- this one was executed</p> <p>19 November 5 of '99 and the escrow agreement was executed</p> <p>20 11-4 of '99?</p> <p>21 A. When you say they were executed on those</p> <p>22 dates --</p> <p>23 Q. You're having a hard time with that? Well, I</p> <p>24 say -- I said they were executed; that may be incorrect.</p> <p>25 The fax dates at the top, you know, show November 5 of</p>

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<p style="text-align: right;">Page 82</p> <p>1 '99 for ENB 313, which is the document you're looking 2 at, and then the escrow agreement appears to be faxed on 3 11-4 of '99, so right around the same time? 4 A. Around the same time, yes, okay. 5 Q. I'm just wondering why the discrepancies? 6 A. I don't recall. I don't remember seeing this 7 before, but it doesn't mean I didn't, but I don't 8 remember seeing the document 313. 9 Q. Okay. I note, though, that in 315 that there 10 is -- appears to be a signature page to an escrow 11 agreement, but we don't have the escrow agreement there? 12 A. You're correct. 13 Q. So perhaps the escrow agreement was eventually 14 amended, revised to incorporate the 15 million? 15 A. I don't remember that happening. 16 Q. Okay. Now, if you'll look at -- on 313 again, 17 which is the letter from K-Pipe Merger Corporation to 18 Midcoast, the last -- second to the last sentence says, 19 "Midcoast acknowledges that K-Pipe is relying on this 20 letter of understanding or undertaking other financial 21 obligations to third parties, which third parties are 22 acknowledged by Midcoast to be donee or creditor 23 beneficiaries. Midcoast agrees that such third parties 24 may pursue claims they may have against Midcoast." 25 A. That's what it says, yes.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes. 2 Q. And it relates to the assets purchase 3 agreement; is that right? 4 A. Correct. 5 Q. And it's -- the amount of the -- let's see. It 6 says Bank of America, down on point No. 1. Bank of 7 America will deposit 198,100,000 for credit to Rabobank; 8 is that right? 9 A. That's correct, that's what it says. 10 Q. For further credit to Midcoast. And then on 4, 11 it says, "The disbursement of escrowed property is 12 subject only to the fulfillment of the conditions 13 precedent, that buyer and Bank of America jointly give 14 written notice of escrow agent to deliver the escrowed 15 property. Escrow agent is hereby authorized and 16 directed to remit and deliver the escrow property on 17 Tuesday, November 9, 1999, before 4:00 p.m. as follows." 18 So, the 198 million was -- was borrowed by 19 Midcoast from Bank of America and is a syndicate of 20 other lenders; is that right? 21 A. Yes. 22 Q. So -- and then that amount was to be disbursed 23 as listed in paragraph 4 on the next page; is that 24 right? 25 A. That's what the document says, yes.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. So, who would be the -- who are the third-party 2 donees or creditor beneficiaries? 3 A. Well, the creditors would be the banks, 4 obviously, that would lend money. 5 Q. And in this case it would have been Rabobank? 6 A. They were involved somehow in the transaction. 7 I don't recall if they were a lender or not. 8 Q. Okay. 9 A. I don't -- they were not a lender to Midcoast. 10 Q. Okay. And then donee, a third-party that would 11 be a donee, would that be Langley? 12 A. I don't -- I don't know. 13 Q. So, essentially, this puts Midcoast on the hook 14 to others if it failed to close the deal with K-Pipe, is 15 that right, with third-party donees or creditor 16 beneficiaries? 17 A. That's what the sentence says, yes. 18 Q. Would you have reviewed this before it was 19 signed? 20 A. I don't recall seeing this before, no. 21 Q. If you'll turn to ENB 322 -- 22 A. Okay. 23 Q. -- now, this is the escrow agreement between 24 K-Pipe Merger, Midcoast, Rabobank and Bank of America; 25 is that right?</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Okay. So, it was anticipated that 112,695,895 2 would be transferred to the seller, which at that point 3 was -- was K-Pipe Merger; is that right? 4 A. Yes. 5 Q. 73 million to State Street Bank, and I assume 6 that's for outstanding debt; is that right? 7 A. I -- that's a safe assumption. I assume that's 8 correct. 9 Q. Okay. It says, Reference Synergy Pipeline 10 Company, LP. The sum of \$6 million and some change 11 shall be wired to Chase Manhattan, again for Synergy. I 12 guess that's some more debt? 13 A. Correct. 14 Q. Okay. And then the sum of \$6.1 million to Bank 15 of America for the benefit of the Butcher interests; is 16 that right? 17 A. That's what it says, yes. 18 Q. Okay. And the balance should be -- would be 19 sent back to Midcoast Energy; is that right? 20 A. Correct. 21 Q. Okay. I thought you said earlier that Midcoast 22 did not have the financial wherewithal to buy the 23 Butcher interests? 24 A. That was my recollection. 25 Q. Because, in effect, Midcoast borrowed the money</p>

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<p style="text-align: right;">Page 86</p> <p>1 to buy the Butcher interests, right?</p> <p>2 A. Yes. That's what this says, yes.</p> <p>3 Q. Okay. So that again raises the question why</p> <p>4 exclude the Butcher interests as an asset on the asset</p> <p>5 purchase agreement and then still pay for it in the same</p> <p>6 loan transaction?</p> <p>7 A. Well, I note that it says the benefit of</p> <p>8 Butcher interest partnership. The Butcher interest was</p> <p>9 actually acquired by Midcoast at a later date from a</p> <p>10 partnership that was set up. So the Butcher interests</p> <p>11 went from K-Pipe into a partnership.</p> <p>12 Q. Uh-huh.</p> <p>13 A. And Midcoast was part -- was one of the</p> <p>14 partners in that partnership. And then Midcoast at a</p> <p>15 later date actually purchased the entire Butcher</p> <p>16 interests from that partnership.</p> <p>17 Q. Okay.</p> <p>18 A. I believe that's the case.</p> <p>19 Q. All right. Do you know why then the Butcher</p> <p>20 interest was transferred to a partnership, rather than</p> <p>21 just buying it with -- among the other assets that were</p> <p>22 purchased?</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you have any recollection of why a loan was</p> <p>25 taken out for the Butcher interest partnership?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. The only thing it owned, from my recollection,</p> <p>2 was the Butcher interest itself; so, therefore, it had</p> <p>3 revenue coming in.</p> <p>4 Q. Okay. And the obligation to pay it out was --</p> <p>5 was imposed upon Midcoast by virtue of its purchase of</p> <p>6 the Kansas Pipeline assets?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. So, the sole reason, the sole operations</p> <p>9 of the Butcher interest partnership were to receive</p> <p>10 those revenue interests?</p> <p>11 A. I don't -- my recollection was that's -- that</p> <p>12 was the only purpose that it was set up for and that's</p> <p>13 all that it did, yes.</p> <p>14 Q. Okay. Is there -- was there any legal benefit</p> <p>15 of having that interest in a partnership versus Midcoast</p> <p>16 owning it outright?</p> <p>17 A. Not that I recall, no.</p> <p>18 Q. Was there any business advantage of having that</p> <p>19 partnership interest owned by the Butcher interest</p> <p>20 partnership versus Midcoast owning it outright?</p> <p>21 MR. STERN: Objection, form.</p> <p>22 A. Yeah, not that I'm aware of.</p> <p>23 Q. (BY MR. COFFIN) Do you recall who was making</p> <p>24 the note payments on the -- on behalf of the Butcher</p> <p>25 interest partnership?</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Like I said earlier, my recollection was that</p> <p>2 Midcoast did not have the cash to buy it at that time.</p> <p>3 So the loan was made to the Butcher interest</p> <p>4 partnership, those two entities that made up the</p> <p>5 partnership, and Midcoast was one of those two entities.</p> <p>6 Q. So, are you saying that Midcoast could not</p> <p>7 borrow the money on the -- on its financial strength?</p> <p>8 A. By itself, correct.</p> <p>9 Q. For the Butcher interest?</p> <p>10 A. That was my recollection, yes.</p> <p>11 Q. Do you know if Midcoast guaranteed that loan?</p> <p>12 A. I don't remember. They could have. I don't</p> <p>13 remember.</p> <p>14 Q. Do you remember who the -- who the other</p> <p>15 partner was of the Butcher interest?</p> <p>16 A. No. I remember -- no, I don't.</p> <p>17 Q. Were you aware at all with the operations of</p> <p>18 the Butcher interest after it was acquired or after</p> <p>19 Midcoast became a partner in the Butcher interest</p> <p>20 partnership?</p> <p>21 A. Would you restate the question? I'm sorry.</p> <p>22 Q. Were you involved in the operations of -- well,</p> <p>23 let's back up. What were -- if you recall, what were</p> <p>24 the Butcher interest partnership's -- what was its</p> <p>25 business purposes?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. No, I don't.</p> <p>2 Q. Did you know that shortly after the Butcher</p> <p>3 Interest Partnership was formed that 6.225 million of</p> <p>4 cash was distributed to the K-Pipe group?</p> <p>5 MR. STERN: Objection, form.</p> <p>6 A. No, I did not know that.</p> <p>7 Q. (BY MR. COFFIN) Do you know what happened to</p> <p>8 the Butcher Interest Partnership?</p> <p>9 A. Eventually, a Midcoast entity or Midcoast</p> <p>10 actually acquired all of -- 100 percent of it.</p> <p>11 Q. Why? Why did it do that?</p> <p>12 A. Well, it was a revenue stream, so it -- it was</p> <p>13 an opportunity for Midcoast to own 100 percent of that</p> <p>14 revenue stream instead of the partnership receiving it.</p> <p>15 Q. Was there actually cash generated from the</p> <p>16 revenue stream?</p> <p>17 A. I don't know the answer to that. That would</p> <p>18 have been the accounting/finance group.</p> <p>19 Q. Do you know what the partnership did with the</p> <p>20 \$6.1 million?</p> <p>21 A. I do not.</p> <p>22 Q. Turn to ENB 329. This is an agreement consent</p> <p>23 of sole stockholder of the Bishop Pipeline Company,</p> <p>24 correct?</p> <p>25 A. Yes.</p>

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<p>1 Q. Dated November 8, 1999?</p> <p>2 A. Yes.</p> <p>3 Q. And this is a resolution, I guess, to or a</p> <p>4 consent resolving that the corporation, which is Bishop</p> <p>5 Pipeline Company, dividend its entire interest in the</p> <p>6 Butcher interest to the sole stockholder of the</p> <p>7 corporation; is that correct?</p> <p>8 A. That's what it says, yes.</p> <p>9 Q. The sole stockholder is K-Pipe Group, Inc.?</p> <p>10 A. Yes.</p> <p>11 Q. Any idea why -- why the Butcher interest was</p> <p>12 dividended out of that corporation?</p> <p>13 A. The Butcher interest had to end up in that</p> <p>14 Butcher Interest Partnership, so somehow it went from</p> <p>15 K-Pipe Group to the Bishop Interest Partnership.</p> <p>16 Q. Did you have any discussions with K-Pipe Group</p> <p>17 or anybody on that side on this particular action?</p> <p>18 A. No.</p> <p>19 Q. So, when you give me that explanation, are</p> <p>20 you -- are you making an assumption that that's why this</p> <p>21 happened or do you actually know?</p> <p>22 A. Well, I know somehow the Butcher interest had</p> <p>23 to get into the partnership. I don't know how it got</p> <p>24 there, but...</p> <p>25 Q. Okay. It appears in looking at -- if you go to</p>	<p>1 paragraph, second whereas. "Whereas, as a condition of</p> <p>2 the closing of the asset purchase agreement, KPC is to</p> <p>3 assume certain debt obligations of Synergy as described</p> <p>4 on Exhibit A." Do you remember why that was to occur?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. Turn to ENB 364. This is a guaranty.</p> <p>7 Underneath it says in parenthesis Parent. And Midcoast</p> <p>8 Energy Resources is the guarantor, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And Midcoast is guaranteeing agreements between</p> <p>11 certain entities, MarGasCo, M-A-R-G-A-S-C-O, and MRG,</p> <p>12 Management Resources Group, LLC. Essentially there</p> <p>13 it's -- Midcoast is guaranteeing obligations --</p> <p>14 liabilities, obligations, covenants and agreements</p> <p>15 contained in the project development agreement dated</p> <p>16 October 25, 1999; is that right?</p> <p>17 A. Yeah, I believe so, yes.</p> <p>18 Q. The consulting agreement dated October 25,</p> <p>19 1999?</p> <p>20 A. Yes.</p> <p>21 Q. The guaranty by Kansas Pipeline Company to MRG,</p> <p>22 et al, dated November 2 of '99?</p> <p>23 A. Correct.</p> <p>24 Q. There's one more, it looks like. And the</p> <p>25 project development and MRG interest agreement between</p>
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<p>1 ENB 335 --</p> <p>2 A. Okay.</p> <p>3 Q. -- it looks like the same type of consent as</p> <p>4 related to Bishop Gas Transmission Co.; is that right?</p> <p>5 A. That's what it looks, yes.</p> <p>6 Q. It looks like that entity may have owned an</p> <p>7 interest in the Butcher interest as well?</p> <p>8 A. That's what it appears, yes.</p> <p>9 Q. Go to ENB 359, please.</p> <p>10 A. Okay.</p> <p>11 Q. This is an assumption agreement?</p> <p>12 A. 59?</p> <p>13 Q. Yeah. I'm sorry. ENB 359.</p> <p>14 A. Got it.</p> <p>15 Q. Assumption agreement between Synergy Pipeline</p> <p>16 Company and Kansas Pipeline Company; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. Now, what -- do you have an understanding of</p> <p>19 what is trying to be accomplished in this document?</p> <p>20 A. No. I remember the title of the document, but</p> <p>21 I don't remember the content of it at all.</p> <p>22 Q. Okay.</p> <p>23 A. No, I don't. I don't know what was intended</p> <p>24 happen here.</p> <p>25 Q. It says, "Whereas" -- this is the third</p>	<p>1 MRG and KPC, which is Kansas Pipeline Company?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. But, essentially, isn't Midcoast</p> <p>4 guaranteeing transactions between K-Pipe and Langley</p> <p>5 under this guaranty?</p> <p>6 A. No. Midcoast is actually guaranteeing the</p> <p>7 obligations of one of its newly acquired subsidiary</p> <p>8 companies. Midcoast actually acquired MarGasCo.</p> <p>9 Q. Uh-huh.</p> <p>10 A. And so MarGasCo is a subsidiary company of M --</p> <p>11 of Midcoast Energy Resources. So, when Midcoast Energy</p> <p>12 issues a guaranty, it's just guaranteeing that its</p> <p>13 subsidiary company will perform.</p> <p>14 Q. Okay. And who was MRG?</p> <p>15 A. My recollection was MRG was a marketing company</p> <p>16 that was acquired as part of the Kansas Pipeline Company</p> <p>17 acquisition. I believe that's the case.</p> <p>18 Q. Okay. So, essentially, it was a -- it was a</p> <p>19 Langley, Langley or Bishop Group?</p> <p>20 MR. STERN: Objection, form.</p> <p>21 A. You mean was that company at one time owned by</p> <p>22 Langley?</p> <p>23 Q. (BY MR. COFFIN) Yeah.</p> <p>24 A. I believe it was, yes.</p> <p>25 Q. And MarGasCo, same thing?</p>

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<p style="text-align: right;">Page 94</p> <p>1 A. Yes, at one time MarGasCo I believe was owned 2 by Langley or one of the Langley companies. 3 Q. Okay. And all the agreements that are 4 guaranteed took place prior to the closing of Midcoast's 5 purchase of assets from K-Pipe; is that right? 6 A. Correct. 7 Q. So, who was the -- who would be the beneficiary 8 of this guaranty? 9 A. Management Resources Group, LLC, or MRG as it's 10 referred to in this document. 11 Q. Uh-huh. And MRG and all those entities listed 12 in there, are they owned by K-Pipe at the time or -- 13 MR. STERN: Objection, form. 14 Q. (BY MR. COFFIN) Or Langley? 15 MR. STERN: What time? 16 MR. COFFIN: Pardon me? 17 Q. (BY MR. COFFIN) At the time this was executed. 18 A. At the time this was executed. Let's see 19 whenever it executed. November 9th. At the time this 20 was executed, Kansas Pipeline Company would have been 21 owned by Midcoast, MarGasCo would have been owned by 22 Midcoast, MRG would not have been owned by Midcoast. It 23 would have been owned by Bishop or Langley or somebody 24 else. 25 Q. How about Management Resources Group, LLC?</p>	<p style="text-align: right;">Page 96</p> <p>1 A. I don't recall what state of incorporation or 2 organization the actual companies were, but his office 3 was in Kansas. He also had an office in North Dakota or 4 some other state as well. 5 Q. Okay. Turn to ENB 367. 6 A. The other partner in Bishop Interest 7 Partnership was K-Pipe Group, Inc., obviously as stated 8 in this document. 9 Q. All right. And this is the Butcher Interest 10 Partnership general partnership agreement, correct? 11 A. Correct. 12 Q. Who drafted this document? 13 A. I don't recall who drafted it. I don't recall 14 if it was drafted by K-Pipe or -- or Midcoast. 15 Q. Okay. Would you have reviewed it before it was 16 signed? 17 A. I would have, yes. 18 Q. Okay. It looks like on the last page, ENB 373, 19 Richard Robert signed it, correct? 20 A. Correct. 21 Q. Okay. On 6.01 on the second page, K-Pipe, it 22 talks about capital contributions, capital account. 23 K-Pipe was to assign or transfer to the partnership all 24 rights it had in the Butcher interest; is that right? 25 A. Yes, it is.</p>
<p style="text-align: right;">Page 95</p> <p>1 A. That's MRG, I believe. 2 Q. Oh, it is? 3 A. I believe it is. I believe Management 4 Resources Group, LLC, is -- is used -- is identified as 5 MRG in this document. 6 Q. Okay. Next page, what's the doctrine of "cy 7 pres"? 8 A. "Cy pres" goes to the intent of the parties. 9 Q. Uh-huh. 10 A. We -- we struggled with this just because the 11 intent of one party may not be the same as the intent of 12 the other party, but... 13 Q. Okay. Well -- 14 A. It was a Kansas term I was not familiar until 15 this transaction. 16 Q. I see. And you say a Kansas term. Why was 17 the -- was it negotiated that the agreement would be 18 governed by the laws of Kansas versus of Texas or -- 19 A. You know, I don't recall what the law was in 20 the documents. I see the next paragraph, though, says 21 this document is governed by the laws of Kansas. 22 Q. And Langley and his companies were in Kansas; 23 is that right? 24 A. His office was in Kansas, yes. 25 Q. Okay.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. And convey to the partnership the Butcher 2 interest, basically? 3 A. Right. 4 Q. And in consideration for the assignment, K-Pipe 5 would be credited with a capital contribution in the 6 amount of \$6.5 million; is that right? 7 A. That's what it says, yes. 8 Q. Okay. Again, do you recall why the transaction 9 was structured this way? 10 A. My recollection was Midcoast did not have the 11 cash to buy the Butcher interest itself from K-Pipe and 12 it was structured this way so we could at least have an 13 option of purchasing it later. 14 Q. What did K-Pipe bring to the table to allow -- 15 well, let's back up. 16 We looked at the \$6.5 million loan 17 earlier? 18 A. Uh-huh. 19 Q. Which was basically borrowed by Midcoast from 20 Bank of America and the consortium of lenders; is that 21 right? 22 MR. STERN: Objection, form. 23 A. I thought it was a different amount. 24 MR. CROKE: 6.1 million. 25 Q. (BY MR. COFFIN) 6.1 million?</p>

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<p>1 A. I believe that's correct, yes.</p> <p>2 Q. And is it still your testimony then that</p> <p>3 Midcoast was unable by itself to borrow that money to</p> <p>4 buy the Butcher interest?</p> <p>5 A. That's my recollection.</p> <p>6 Q. Do you know if K-Pipe brought anything to the</p> <p>7 table that would give Midcoast additional -- Midcoast or</p> <p>8 the Butcher Interest Partnership any additional</p> <p>9 financial strength to borrow \$6.1 million?</p> <p>10 A. I'm sorry. Would you say it again?</p> <p>11 Q. I don't know if I can. What did K-Pipe bring</p> <p>12 to the table to allow, other than the Butcher Interest</p> <p>13 Partner -- or other than the Butcher interest, that</p> <p>14 would allow Midcoast or the Butcher Interest Partnership</p> <p>15 to borrow the money, the \$6.1 million, from Bank of</p> <p>16 America and the lenders?</p> <p>17 A. They would have had the cash we just paid them</p> <p>18 for the Kansas Pipeline assets.</p> <p>19 Q. Was that -- okay. Was that cash, though, in</p> <p>20 turn paid to Langley to buy his stock?</p> <p>21 A. I -- they had to pay it somewhere, so I don't</p> <p>22 know if it was that cash or other cash.</p> <p>23 Q. Okay. And Article 7 on the next page, it talks</p> <p>24 about the partnership shall enter into a credit</p> <p>25 agreement with Bank of America, pursuant to which the</p>	<p>1 MR. STERN: Yeah.</p> <p>2 Q. (BY MR. COFFIN) Go to ENB 370.</p> <p>3 A. Okay.</p> <p>4 Q. And Article 13.</p> <p>5 A. Yes.</p> <p>6 Q. This discusses Midcoast's option to purchase</p> <p>7 K-Pipe's share of the partnership interest?</p> <p>8 A. Correct.</p> <p>9 Q. Tell me why there was an option -- why Midcoast</p> <p>10 was granted an option or why they negotiated an option</p> <p>11 to purchase the partnership interest.</p> <p>12 A. It's one of the negotiating items, negotiated</p> <p>13 items in the asset purchase. We negotiated to purchase</p> <p>14 Kansas Pipeline Company. We also negotiated to acquire</p> <p>15 the Butcher interest in some manner. This is the only</p> <p>16 manner that we could economically afford to acquire it,</p> <p>17 through a partnership, with the right that we had the</p> <p>18 right -- with the option to acquire the asset from the</p> <p>19 partnership at a later time.</p> <p>20 Q. Okay. And there's a date up there, any time on</p> <p>21 or after May 9 of 2000. Do you know why -- how that</p> <p>22 date was negotiated or determined?</p> <p>23 A. I do not know.</p> <p>24 Q. And then there's a notice date in 13.02 of</p> <p>25 November 9 of 2000?</p>
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<p>1 partnership shall obtain loans in the amount of</p> <p>2 \$6,100,000, which loans are secured by partnership</p> <p>3 property and guaranteed by each of the partners?</p> <p>4 A. Correct.</p> <p>5 Q. Upon receipt of the loan proceeds, the</p> <p>6 partnership shall distribute \$6,225,000 to K-Pipe and</p> <p>7 K-Pipe's capital account shall be reduced accordingly.</p> <p>8 Do you recall why the money was distributed to K-Pipe?</p> <p>9 A. K-Pipe owned the Butcher interest, so the</p> <p>10 partnership would have had to purchase the Butcher</p> <p>11 interest from K-Pipe.</p> <p>12 Q. And, again, it's your testimony that this --</p> <p>13 that the transaction with the Butcher interest had to be</p> <p>14 structured in this way because of Midcoast's inability</p> <p>15 to borrow that \$6.1 million?</p> <p>16 A. That's my recollection.</p> <p>17 MR. STERN: What do you want to do about</p> <p>18 lunch? Whenever we get to that point.</p> <p>19 MR. COFFIN: Yeah, give me a minute. Let</p> <p>20 me get through this binder, which will be the next few</p> <p>21 minutes, and then we'll do that.</p> <p>22 MR. STERN: Okay, that's fine. I just</p> <p>23 wanted to remind you, because I get hungry.</p> <p>24 MR. COFFIN: You get cranky when you get</p> <p>25 hungry?</p>	<p>1 A. Correct.</p> <p>2 Q. Any -- it looks like there are -- based on</p> <p>3 notices before that date and after the date, the</p> <p>4 purchase price for that interest either -- is determined</p> <p>5 based on, I guess, the closing?</p> <p>6 I'm sorry. The purchase price is based on</p> <p>7 certain percentages of the K-Pipe's capital account?</p> <p>8 A. That's what it says.</p> <p>9 Q. Okay. Do you know why that November 9, 2000</p> <p>10 date was used?</p> <p>11 A. No, I do not.</p> <p>12 Q. And on 13.04, the next page, it says, "K-Pipe</p> <p>13 shall have the option at any time on or after November 9</p> <p>14 of 2000 to sell its partnership interest to Midcoast."</p> <p>15 A. So this is what I would call a put, where they</p> <p>16 have the right to put it to us and force us to acquire</p> <p>17 it.</p> <p>18 Q. Okay. And why was that put granted to K-Pipe?</p> <p>19 A. It appears that K-Pipe wanted their money and</p> <p>20 there was a date when they wanted to get the -- their</p> <p>21 money from Midcoast and wanted out of this partnership.</p> <p>22 MR. STERN: I'm going to object to the</p> <p>23 form of the question.</p> <p>24 A. This is not an uncommon provision in a</p> <p>25 partnership agreement. The one side wants the right to</p>

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<p style="text-align: right;">Page 102</p> <p>1 get out at a future date. I may on such and such a date 2 or before or after such a date force you to buy me out, 3 so this is not an unusual provision. 4 Q. Okay. 5 MR. STERN: Just answer the questions. 6 Q. (BY MR. COFFIN) Did -- go to ENB 377, please. 7 This is the credit agreement between Butcher Interest 8 Partnership as borrower and Bank of America N.A. as 9 lender, correct? 10 A. Correct. 11 Q. Okay. Who negotiated with the bank on this? 12 A. I know Richard Robert was negotiating with the 13 bank, our CFO. 14 Q. On behalf of Midcoast? 15 A. Midcoast or Midcoast as a partner in the 16 Butcher Interest Partnership. 17 Q. Was -- who negotiated on the other side? 18 A. I don't recall. 19 Q. And when I say "other side," I mean K-Pipe. 20 A. I don't recall who K-Pipe had involved in the 21 negotiations. 22 Q. Do you remember if they negotiated any of the 23 terms at all? 24 A. I do not. 25 Q. Okay. Do you know if Midcoast guaranteed this</p>	<p style="text-align: right;">Page 104</p> <p>1 agreement. 2 A. Right. Got it. 3 Q. Okay. So, was there money -- my question, I 4 guess, would be would the document, the credit agreement 5 between Butcher Interest Partnership as borrower and 6 Bank of America as lender, is that a refinancing of the 7 6.1 million that was to be distributed under the escrow 8 agreement on ENB 322? 9 A. I don't remember this. 10 Q. Okay. Turn to 539, ENB 539, please. This 11 appears to be some correspondence from you to Mr. Teig 12 and to K-Pipe Merger Corporation, in general? 13 A. Correct. 14 Q. Who is Mr. Teig, do you recall? 15 A. Well, it says here he was the CPA for K-Pipe. 16 I had forgotten who he was until seeing this. 17 Q. Okay. Had you met with Mr. Teig at all? 18 A. No, not that I remember. 19 Q. Okay. Looks like there's an issue between 20 Midcoast and K-Pipe regarding the true-up of the revised 21 adjustment value; is that right? 22 A. Correct. I remember there was, yes. 23 Q. Was that -- do you recall what the issue was? 24 A. No. I just remember there was an issue. I 25 don't remember what it was, but...</p>
<p style="text-align: right;">Page 103</p> <p>1 credit agreement? 2 A. I don't recall specifically if we did or did 3 not. 4 Q. Do you recall whether they were supposed to? 5 A. Not offhand. It's not uncommon that we would 6 issue guarantees to our bank, though, for loans, but I 7 don't remember this, specifically on this one if we did 8 or did not. 9 Q. Do you know if K-Pipe guaranteed this note? 10 A. I don't recall. 11 Q. I think it mentioned that both parties were 12 supposed to in the partnership agreement. Do you recall 13 that? 14 A. Right, I recall that, yes. 15 Q. Now, is this \$6.1 million that was borrowed 16 different from the cash that was received from this 17 loan? Is it different from the loan we saw where the 18 escrow proceeds would be distributed? 19 MR. STERN: Objection, form. 20 A. Is it a different 6.1 million? 21 Q. (BY MR. COFFIN) Yeah. I know that's a terrible 22 question. 23 A. I don't know if it's the same or different. I 24 know the amounts are the same, I understand that. 25 Q. If you'll turn to ENB 323, that's the escrow</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Okay. Was the issue ever resolved? 2 A. It had to be, but I don't remember how. 3 Q. After closing the transaction in November of 4 '99, did you have any occasions to deal with the K-Pipe 5 people, I mean, like Furman, Hoffman, Mr. Teig? 6 A. No. After the transaction, the only time I 7 recall talking to any of them was in connection with the 8 Butcher interest. 9 Q. And obviously this matter here? 10 A. Correct. 11 Q. Did you physically -- or did you talk to 12 anybody over the phone or was it all correspondence 13 related to this matter? 14 A. You know, I sent this letter, but this matter 15 would have been between our financial people. So I know 16 the letter is signed by me and -- and I copied Richard 17 Robert, because I'm making the communication, but the 18 issues are his issues as far as resolving them. 19 Q. Okay. And if you go to 542, it looks like it's 20 an e-mail from -- or to you, Richard Robert from you, 21 Richard Robert from you? 22 A. Yes. 23 Q. And reading through the e-mail string there, it 24 looks like Ms. Morelli was having a hard time getting 25 ahold of K-Pipe people. Do you recall that?</p>

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<p>1 A. Yeah, I see that here, yes.</p> <p>2 Q. It says, "Please see message that K-Pipe</p> <p>3 attorney cannot help us. Their client is not</p> <p>4 cooperating. I will send them an official notice.</p> <p>5 Chris."</p> <p>6 A. Uh-huh, I do see that.</p> <p>7 Q. Sent from your Blackberry wireless?</p> <p>8 A. Correct.</p> <p>9 Q. Did you find K-Pipe uncooperative after closing</p> <p>10 the transaction in the matters that you dealt with them</p> <p>11 in?</p> <p>12 A. I don't know if uncooperative. It's just we</p> <p>13 would -- it would be difficult to find a person to talk</p> <p>14 to.</p> <p>15 Q. The next page looks like -- looks like e-mail</p> <p>16 from you to Cynthia Morelli, correct?</p> <p>17 A. What page? I'm sorry.</p> <p>18 Q. Oh, 543. 543, it says, "Richard Robert, our</p> <p>19 CFO," you're writing this to Cynthia Morelli, "has been</p> <p>20 working with Howard on the working capital adjustment</p> <p>21 and we believe that both parties have agreed that</p> <p>22 Midcoast is owed approximately" -- Midcoast is owed?</p> <p>23 It should be owed, isn't it?</p> <p>24 A. Correct, yes, should be.</p> <p>25 Q. -- "owed approximately \$120,000.</p>	<p>1 Q. And that's with the FERC; is that correct?</p> <p>2 A. Correct. That's correct.</p> <p>3 Q. And my question is more why is this document in</p> <p>4 the closing book or the closing binder? What does it</p> <p>5 have to do with the closing or with the transaction?</p> <p>6 A. I don't have a clue. I mean, all I can assume</p> <p>7 is it was inadvertently inserted in here --</p> <p>8 Q. Oh, okay.</p> <p>9 A. -- because it's not a typical closing document.</p> <p>10 Q. All right. Exhibit 2, which is the other</p> <p>11 binder, the only reason I'm going to talk about it is</p> <p>12 because I'm going to be very brief on it. Exhibit 2 is</p> <p>13 the -- the sale of stock binder.</p> <p>14 A. Okay.</p> <p>15 Q. All right. I'm going to represent to you that</p> <p>16 I got this from your counsel as well. And would you</p> <p>17 necessarily have received a -- or it was -- it came from</p> <p>18 you, your counsel, I assume from Midcoast, so I was just</p> <p>19 wondering, why would Midcoast have a copy of that</p> <p>20 binder?</p> <p>21 A. As part of our due diligence, we typically</p> <p>22 would get the documents supporting our acquisition, and</p> <p>23 these documents would show that, in fact, K-Pipe did</p> <p>24 acquire the assets and show the chain of title of the</p> <p>25 assets.</p>
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<p>1 Unfortunately, Howard wants to wait to settle a tax</p> <p>2 matter with Dennis Langley before paying us." Do you</p> <p>3 know what that tax matter was?</p> <p>4 A. No. I knew that there were -- well, I'll just</p> <p>5 say no. I assumed that there were issues to be resolved</p> <p>6 between K-Pipe's acquisition from Langley, just like we</p> <p>7 had issues to resolve between K-Pipe and Midcoast.</p> <p>8 Q. Okay. No. 554, please.</p> <p>9 A. Okay.</p> <p>10 Q. This appears to be some correspondence between</p> <p>11 Heller, Ehrman, White and -- how do you pronounce that</p> <p>12 last one?</p> <p>13 A. Tino Monaldo.</p> <p>14 Q. No, I'm sorry, I must have the wrong one.</p> <p>15 540 -- 554.</p> <p>16 A. Oh, excuse me. Okay.</p> <p>17 MR. CROKE: McAuliffe.</p> <p>18 MR. COFFIN: McAuliffe.</p> <p>19 A. I don't see that name on here.</p> <p>20 Q. (BY MR. COFFIN) On the letterhead, I'm sorry,</p> <p>21 at the top.</p> <p>22 A. The letterhead, I'm sorry, okay, yes.</p> <p>23 Q. Uh-huh. And this is a memo related to the</p> <p>24 Section 4 rate case; is that right?</p> <p>25 A. Yes.</p>	<p>1 MR. COFFIN: All right. How about a lunch</p> <p>2 break?</p> <p>3 MR. STERN: Sounds good.</p> <p>4 THE WITNESS: Good.</p> <p>5 (Lunch recess, 12:11 p.m. to 1:22 p.m.)</p> <p>6 MR. COFFIN: All right. Let's go back on</p> <p>7 the record.</p> <p>8 Q. (BY MR. COFFIN) Mr. Kaitson, are you ready?</p> <p>9 A. Yes, sir.</p> <p>10 Q. If you'll turn to Government Exhibit 10, which</p> <p>11 is -- it's a Kansas Pipeline Company management</p> <p>12 discussion, August of 1999.</p> <p>13 A. Okay.</p> <p>14 Q. That's Bates stamped number -- we use the DOJ</p> <p>15 Bates stamp number on this one, ENB/DOJ 22805.</p> <p>16 A. Correct.</p> <p>17 Q. On the top, it says Confidential. It has</p> <p>18 Midcoast handwritten there. Do you recognize the</p> <p>19 handwriting on there?</p> <p>20 A. I do not.</p> <p>21 Q. Now, did you review something like this in part</p> <p>22 of your due diligence work?</p> <p>23 A. I recall receiving a document similar to this</p> <p>24 the first time we went to Kansas City to meet with</p> <p>25 Dennis Langley and the Bishop folks.</p>

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<p>1 Q. Okay.</p> <p>2 MR. COFFIN: Let's go off the record for</p> <p>3 just a second.</p> <p>4 (Recess from 1:23 p.m. to 1:24 p.m.)</p> <p>5 MR. COFFIN: Okay. Back on the record.</p> <p>6 Q. (BY MR. COFFIN) Mr. Kaitson, you would have</p> <p>7 reviewed something like this, you think, during your due</p> <p>8 diligence work?</p> <p>9 A. Yes.</p> <p>10 Q. And that would have been due diligence related</p> <p>11 to the -- the Midcoast review of the Bishop Pipeline</p> <p>12 Group's assets or stock; is that correct?</p> <p>13 A. Correct, when we were negotiating with Bishop</p> <p>14 to acquire the stock.</p> <p>15 Q. On the stock purchase?</p> <p>16 A. Correct.</p> <p>17 Q. And it's dated August of '99. Would that have</p> <p>18 been around the time you would have received something</p> <p>19 like this?</p> <p>20 A. Yes, it would have been.</p> <p>21 Q. What was attractive about -- attractive to</p> <p>22 Midcoast about Kansas Pipeline Company?</p> <p>23 A. It was a large interstate pipeline. We already</p> <p>24 owned two FERC-regulated interstate pipelines, so we</p> <p>25 were familiar with the business. This was of the size</p>	<p>1 comfortable with.</p> <p>2 Q. Did you have some input in -- input in the</p> <p>3 decision making on whether to go after Kansas Pipeline</p> <p>4 Company?</p> <p>5 A. No. I was on vacation and got a phone call</p> <p>6 that we're going to go on a due diligence, come home.</p> <p>7 Q. Who was the call from, Mr. Tutcher or --</p> <p>8 A. No, Mr. Berthelot.</p> <p>9 Q. Okay. Turn on to Government Exhibit 11, which</p> <p>10 is -- begins with ENB/DOJ 22785.</p> <p>11 A. Right.</p> <p>12 Q. Now, this is a data room index; is that right?</p> <p>13 A. I believe so.</p> <p>14 Q. Okay. And the reason I have it in the binder</p> <p>15 as an exhibit is it has "Midcoast copies, August 9 of</p> <p>16 '99" at the top.</p> <p>17 A. I see that, yes.</p> <p>18 Q. Now, is that your handwriting or anybody's</p> <p>19 handwriting that you know of?</p> <p>20 A. It's not mine. I don't recognize that.</p> <p>21 Q. Okay. It looks like it was provided by KPI,</p> <p>22 which may be Kansas Pipeline, Inc., pursuant to a</p> <p>23 summons from the IRS. Like I said, it has "Midcoast</p> <p>24 copies" at the top, so I assume that you reviewed in</p> <p>25 your group, due diligence group, reviewed something</p>
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<p>1 that we could attempt to acquire larger acquisitions and</p> <p>2 bid on the market around this time period. We couldn't</p> <p>3 afford to acquire them, they were too large. So,</p> <p>4 between those two items and the third being that our</p> <p>5 president was from Kansas and this was a Kansas</p> <p>6 acquisition, that -- was another factor that we</p> <p>7 considered.</p> <p>8 Q. That was Mr. Tutcher --</p> <p>9 A. Correct.</p> <p>10 Q. -- that was from Kansas?</p> <p>11 A. Correct, yes.</p> <p>12 Q. Did he know Mr. Langley?</p> <p>13 A. I don't know if he did or not.</p> <p>14 Q. Okay. So, was Midcoast pursuing a pipeline</p> <p>15 company or did Bishop or its representatives,</p> <p>16 representatives call Midcoast first?</p> <p>17 A. I don't know the answer to that.</p> <p>18 Q. Okay. Any part of the offering memorandum that</p> <p>19 you considered particularly attractive as far as Kansas</p> <p>20 Pipeline Company went?</p> <p>21 A. I liked the idea of acquiring an asset that we</p> <p>22 already knew how to operate that type of business. I</p> <p>23 mean FERC interstate. So we had folks that were</p> <p>24 familiar with that, familiar with the regulations. That</p> <p>25 was the -- that was probably the one issue I was most</p>	<p>1 similar to this?</p> <p>2 A. Yeah, this appears to be the document or</p> <p>3 something similar to a document that we received of what</p> <p>4 was in the data room on a trip to Kansas City.</p> <p>5 Q. Okay. And I think the data room index you</p> <p>6 talked about earlier is pretty typical in larger deals?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Turn to Exhibit 12. This is -- appears</p> <p>9 to be a series of document requests made by a gentleman</p> <p>10 from Midcoast; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Are those -- let's see. Kaitson, I think,</p> <p>13 yours, is the third one, third page?</p> <p>14 A. That's correct.</p> <p>15 Q. And is that your handwriting on that document?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Okay. I would assume that the other</p> <p>18 individuals there, that's their handwriting as well?</p> <p>19 A. Yeah.</p> <p>20 Q. Can you tell?</p> <p>21 A. Couple of them I recognize. Dan Tutcher, I</p> <p>22 recognize his.</p> <p>23 Q. Yeah, uh-huh.</p> <p>24 Okay. Let me ask you generally, how does</p> <p>25 it work? Do you go visit -- did you go and visit</p>

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<p style="text-align: right;">Page 114</p> <p>1 Mr. Langley's offices and then provide -- or did they 2 provide these forms to you that you filled out? 3 A. The process first started, we were given a data 4 room index of this type and we were not allowed to go 5 into the room. They had a clerk or a person that was in 6 the room. We would identify which items on this list we 7 wanted to look at. We were given a piece of paper with 8 the cross-reference from the index sheet. They would 9 pull the file and give it to us. When we were done, we 10 would give it back to them. 11 Q. Okay. So, once you got it -- once it was given 12 to you, somebody would check "out" and then when it came 13 back somebody would check "in"? 14 A. Yes. 15 Q. And this was upon an initial trip to -- to 16 Langley's offices; is that right? 17 A. I can't say for sure that this -- these 18 documents were from our first trip, but these are the 19 documents we used I know for sure the first couple times 20 we went to the data room. 21 Q. Okay. On the first trip you went, which you 22 were required to come back from vacation to go on -- 23 A. Right. 24 Q. -- was that -- did you do any due diligence at 25 that time?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. How many would be on teams of the due diligence 2 teams that you would take up there? 3 A. As small as three or four, as many as a dozen. 4 Q. And you said there were at least three 5 instances where you, Midcoast, took teams up there to 6 perform due diligence? 7 A. More than three. First two I know for sure we 8 followed the process of making requests to review 9 documents. I know I'm not supposed to guess, but I 10 would say perhaps six times we went to Kansas City. 11 Q. Okay. Exhibits 14 and 15 are unsigned copies 12 of letters from Bryan Cave, LLP, to Midcoast, 13 specifically Mr. Lanningham on Exhibit 14 and Mr. Bray 14 on Exhibit 15. Are these other -- do those letters 15 represent other incidences of due diligence or other due 16 diligence? 17 A. I have never seen these before. 18 Q. Okay. Was it -- was there a procedure ever 19 where, with regard to this specific transaction or 20 attempted transaction -- and that's the stock 21 purchase -- where you guys, Midcoast, would request 22 documents from Langley or his law firm and they would 23 send them to you? 24 A. Yes. 25 Q. Okay. Exhibit 20 is a draft document, board of</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes, extensive due diligence at that time. 2 That was I believe in August, maybe late July. 3 Q. And using the same procedure, the data room 4 index and the data request lists? 5 A. Yes. 6 Q. And then do you recall another time that you 7 may have gone up and done the same thing, as far as 8 requesting documents on the data index? 9 A. Yes. 10 Q. Okay. So maybe twice that happened in this 11 acquisition? 12 A. Twice using this process with these types of 13 requests. 14 Q. Okay. 15 A. And after perhaps the third time we went up, we 16 were then allowed to go into the data room and review 17 whatever documents we desired. 18 Q. I see. 19 All right. And then Government Exhibit 20 13, I believe the IRS obtained this document. Were 21 those the people that were involved in the due 22 diligence? 23 A. Yes, those and others. 24 Q. On behalf of Midcoast? 25 A. Yes.</p>	<p style="text-align: right;">Page 117</p> <p>1 directors meeting for Midcoast Energy Resources, Inc., 2 dated August 11th of 1999. 3 MR. COFFIN: I assume, Ms. Pipkin, there 4 are signed copies of all the minutes that -- in the 5 documents that you provided us on the production? 6 MS. PIPKIN: We've provided you with 7 everything we have. 8 MR. COFFIN: Okay. 9 MS. PIPKIN: So -- 10 MR. COFFIN: Well, I'll substitute this 11 with a signed copy later. 12 Q. (BY MR. COFFIN) But, generally speaking, 13 Mr. Kaitson, did you ever have an opportunity or 14 occasion to review minutes to board meetings for the 15 company? 16 A. No. 17 Q. Okay. Did you attend board meetings ever? 18 A. No. 19 Q. Okay. If you'll look on paragraph B on the 20 first page of Exhibit 20 -- 21 A. Yes, sir. 22 Q. -- where it says Management Changes, the last 23 sentence refers to various acquired companies, and I was 24 wondering, we talked about the acquisitions that 25 Midcoast had engaged in prior to the Kansas Pipeline.</p>

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<p style="text-align: right;">Page 118</p> <p>1 A. I'm sorry, I'm not following where you are in 2 this document. First page? 3 Q. Okay. First page -- 4 A. Okay. 5 Q. -- paragraph B at the bottom. 6 A. Oh, okay. 7 Q. There's a discussion there about "pull together 8 and assimilating the employees from our various acquired 9 companies." And I'm -- the reason -- the only reason 10 I'm asking the question is: what companies were acquired 11 that he may have been talking about at that point, if 12 you know? 13 A. August of '99 was prior to my joining Midcoast. 14 Q. August of '99? 15 A. I didn't join until Halloween of '99. 16 Q. I thought it was '97. 17 MR. STERN: '97. 18 A. '97, I'm sorry. It was '97. 19 Q. (BY MR. COFFIN) I think we talked about a 20 couple of them, but I just wondered if there were more, 21 if you recall? 22 A. There were transactions during that time 23 period. I don't recall the names of the transactions. 24 Q. All right. 25 A. Okay.</p>	<p style="text-align: right;">Page 120</p> <p>1 far as the bids were concerned. 2 Q. At the top of page 3, it says, "Our initial bid 3 was 157 million, but we now understand the rate case 4 better and have identified additional synergies." What 5 was the rate case? 6 A. The rate case, Kansas Pipeline Company started 7 out as a state regulated pipeline and not regulated by 8 the Federal Energy Regulatory Commission. There was a 9 complaint filed by some shippers or by some parties 10 saying that it really is an interstate pipeline; they're 11 just operating it as different pieces. And, as a result 12 of that, Kansas Pipeline Company agreed they would be 13 regulated by the Federal Energy Regulatory Commission. 14 That required them then to file initial 15 rates, substantiate those rates, to file a tariff, and 16 then to actually file a rate case to prove what the long 17 term rates should be for the pipeline. So that's the 18 rate case explanation. 19 Q. Okay. 20 A. The additional synergies portion of that simply 21 refers to we already have two interstate pipelines, we 22 have folks that are familiar with operating interstate 23 pipelines, so we would not require all of the current 24 Kansas Pipeline Company management team to take over the 25 same service. We would save some money by doing with</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. And on the second page of the minutes -- 2 A. Okay. 3 Q. -- under New Business, Kansas Pipeline, would 4 you read over all the way to B and I'll ask you a 5 question in a second. 6 A. Okay. 7 Q. Okay. And do you know if that section under 8 the New Business, Section A, was consistent with 9 management's perception of Kansas Pipeline at the time? 10 A. Some parts of that I'm familiar with; other 11 parts of this language I'm not familiar with. The 12 dollars that are mentioned in here, I don't recall ever 13 having any discussions or any knowledge of what prices 14 or what bids were submitted by other folks. The portion 15 dealing with the history of the pipeline, first 16 paragraph, if you will, under A, I do recall that 17 information and I believe I also became aware of that as 18 part of the due diligence process. 19 The second paragraph dealing with 20 Mr. Langley's involvement with the Democratic Party, I 21 remember that information being discussed among the 22 management team. 23 Q. Are you aware of the -- the bids that Langley 24 received, as stated by Mr. Tutchter? 25 A. No, I had never heard other company names as</p>	<p style="text-align: right;">Page 121</p> <p>1 our existing folks. 2 Q. Okay. And the last sentence of that paragraph 3 says, "Mr. Langley prefers a cash deal and the 4 debentures can be assumed making a cash offer of \$110 to 5 \$115 million." Do you know why Mr. Langley preferred a 6 cash deal? 7 A. No idea. Never heard that before. 8 Q. And the sentence above that refers to Midcoast 9 continuing to work with Mr. Langley on other projects. 10 Was that -- do you remember that issue at the time? 11 A. I recall Mr. Langley making many speeches to -- 12 to us as a bidder, and one of those being that he liked 13 us and he felt comfortable doing business with Midcoast 14 in the future and -- and looked forward to attempting to 15 work -- to work with us. 16 Q. What was your impression of Mr. Langley? 17 MR. STERN: Note for the record that 18 counsel is smiling. 19 A. Mr. Langley ran his company. He had final 20 say-so, final control over everything that was done. He 21 would be very creative at the times when the rest of us 22 were sleeping. His typical workday started at 2:00 or 23 3:00 or 4:00 in the afternoon and went until 2:00 or 24 3:00 or 4:00 in the morning. We would leave 6:00, 7:00 25 in the evening, go to dinner. Dennis Langley would</p>

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<p>1 still be working. We would come in the next morning and 2 we would be surprised at the documents or the changes 3 that were being proposed to documents. He wanted it his 4 way. 5 Q. Do you have an Exhibit 21 in your book? 6 A. Yes, sir. 7 Q. Tell me what Exhibit 21 is. 8 A. It's a group of letters from different 9 entities, one from Bishop Group, one from Bryan Cave. 10 They appear to be addressed to different individuals. 11 Q. Okay. Could we -- could I just say that this 12 is more due diligence type work that Midcoast was 13 engaged in? Is that too general to describe these 14 documents? 15 A. Let me just -- give me a moment to look at the 16 content. 17 Q. Sure. 18 A. Yes, these appear to be due diligence type 19 communications. 20 Q. Okay. Do you recall how much time or can you 21 estimate how much time was spent conducting due 22 diligence on this stock purchase? 23 A. Hundreds of hours. 24 Q. Is that pretty typical in deals this size or -- 25 A. This was the first deal we had done of this</p>	<p>1 A. Correct. 2 Q. Okay. 22 is a copy of a letter from Chase to 3 Mr. Chip Berthelot; is that right? 4 A. Yes, it is. 5 Q. Dated August 18 of 1999. Once again, this 6 document is not signed, but I think it's the only 7 document we have of its kind. Do you recall reviewing a 8 letter similar to this one -- 9 A. No. 10 Q. -- mr. Kaitson? 11 Okay. So this would be categorized -- how 12 would you categorize this letter, on a general basis, 13 from Chase? It sets forth the procedures for submission 14 of a bid? 15 A. Yeah, it appears that -- that typically this -- 16 a letter of this type would be sent when a party has 17 been invited to participate in the due diligence or 18 bidding process. 19 Q. Okay. It's dated August 18 of 1999. Do you 20 know if that's about the time you would have received a 21 letter like this from -- from Chase? 22 A. I -- no, I don't know what dates it would have 23 been. 24 Q. Okay. All right. Go to Exhibit 23, please. 25 A. Okay.</p>
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<p>1 size. We were somewhat nervous of a deal of this size, 2 so we spent more time perhaps than we would have spent 3 on a deal subsequent to it of the same size. 4 Q. Okay. 5 A. So this is -- we probably spent more time on 6 this than we did other transactions of a similar size, 7 but this transaction was far more complicated than -- 8 than 90 percent of the deals. 9 Q. Yeah. 10 MR. COFFIN: Okay. Let's go off the 11 record for a minute. 12 (Recess from 1:45 p.m. to 1:47 p.m.) 13 Q. (BY MR. COFFIN) Pull Exhibit 150 from your 14 binder. Just pull it out. We'll refer to it 15 periodically. 16 A. Okay. 17 Q. All right. So we were on Exhibit 22; is that 18 right? 19 A. Yes, sir. 20 Q. 22. And we -- and we said that that was more 21 due diligence, basically? 22 A. No, the ones prior to that. 23 Q. Oh, okay. 24 A. Let me look at 22. 25 Q. 21, I'm sorry. 21 was more due diligence?</p>	<p>1 Q. That's a letter from Bank of America to 2 Midcoast, correct? 3 A. Yes. 4 Q. Attention, Richard Robert; is that correct? 5 A. Yes. 6 Q. Did you get a copy or get an opportunity to 7 review this letter? 8 A. Nope. 9 Q. Okay. On the second page, it says, "Having 10 conducted the review cited above and taking into account 11 the assumptions cited above, we believe that a 12 transaction providing for all costs and expenses 13 associated with the acquisition transaction is 14 financeable through and up to \$250 million senior 15 secured bank debt facility." 16 A. I see that. 17 Q. Okay. And this is dated August 25 of '99, so 18 that would have been before K-Pipe would have entered 19 the picture; is that correct? 20 A. I assume so. I know the first time I met 21 K-Pipe. I don't know when they officially entered the 22 picture. 23 Q. Okay. And I asked you to pull Exhibit 150. Do 24 you have that one handy? 25 A. Yes.</p>

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<p>1 Q. And this is Richard Robert's -- I mean, I'm 2 sorry, Ronald Chachere's invoice to Midcoast, correct? 3 A. Yes. 4 Q. Dated November 19, 1999; is that right? 5 A. Yes. 6 Q. And what was Mr. Chachere's relationship with 7 Midcoast in August of '99? 8 A. He was outside counsel for Midcoast and had 9 been outside counsel for Midcoast since their inception. 10 He had been the attorney that had conducted every 11 acquisition for them during this time. 12 Q. He was already being used before you came into 13 the picture at Midcoast? 14 A. That's correct. 15 Q. Okay. The first entry on his invoice shows 16 that on August 16 of '99 he received a call from you and 17 discussed some basic aspects of the acquisition of the 18 Kansas Pipeline; is that correct? 19 A. Correct. 20 Q. Okay. Would that have been the first time he 21 would have been -- I guess is that when Midcoast was 22 serious about the deal -- 23 A. Yes. 24 Q. -- would have been August 16th? 25 You would have made that call?</p>	<p>1 A. Correct. 2 Q. Okay. Who would have drafted this document? 3 A. I seem to recall this being a seller document. 4 The seller proposed this document. 5 Q. Okay. And then the redline changes, who 6 necessarily made those changes, do you know? 7 A. They would have been Midcoast, a combination 8 of -- of the management team that had been involved in 9 the initial review and the initial due diligence. 10 MR. STERN: Is this a complete document? 11 I've just got to page 4. 12 THE WITNESS: Mine goes to page 34. 13 MR. COFFIN: You got a bad copy, I'm 14 sorry. Exhibit 24, let me give you the Bates numbers on 15 it. The Bates number of Exhibit 24, ENB/DOJ 36026 16 through 36060. And since it doesn't have a Bates stamp 17 number on it, I believe it was produced by Chase. 18 A. Mine does have a number at the bottom. 19 Q. (BY MR. COFFIN) Well, I'm sorry, it doesn't 20 have a number other than the government Bates stamp 21 number. 22 A. Oh, correct. 23 Q. So, as of August 30 of '99, there was already a 24 redline draft of the agreement between the two entities? 25 A. Correct.</p>
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<p>1 A. Yes, at the time that I decided that the 2 transaction was of such size that I needed outside 3 counsel to assist. 4 Q. As general counsel, are you responsible for 5 reviewing the legal bills? 6 A. Currently, I am, but at this time I was not. 7 Q. Okay. Who was doing that at the time? 8 A. Richard Robert. 9 Q. And Mr. Robert, I assume, or -- 10 A. I say that. I'm -- I probably ought to -- 11 Q. Qualify? 12 A. I don't know if Richard Robert was. I was not. 13 Q. All right. You were -- you were -- part of 14 your duties did not include reviewing this particular 15 invoice? 16 A. Not at this stage of my career with Midcoast 17 Energy. 18 Q. Okay. 19 A. After the Kansas Pipeline acquisition, I 20 undertook that responsibility. 21 Q. Okay. Exhibit 24, please. 22 A. Yes. 23 Q. This is a redline draft of the agreement and 24 plan of merger between -- by and among Midcoast Energy 25 Resources, Inc. and the Bishop Group, right?</p>	<p>1 Q. Okay. And go to Exhibit 25, please. Is this 2 the initial letter of intent between or that Midcoast 3 sent to Chase on behalf of Langley? 4 A. Yes. 5 Q. So, the primary offer value was \$184,200,000; 6 is that right? 7 A. That's what the document says, yes. 8 Q. Were you involved at all in determining the 9 primary offer value? 10 A. No. 11 Q. Would that be Mr. Tutchter and Mr. Robert? 12 A. And with Mr. Berthelot's involvement, possibly 13 Mr. Herbst. 14 Q. And do you know why the supplemental offers 15 were made under (iii)? 16 A. I recall Dennis Langley telling us at one of 17 our due diligence sessions that his expectations were 18 items A and B would be part of the transaction. 19 Q. Okay. What about C on the next page? 20 A. I didn't think the project development 21 agreement was August 3rd. Seems to me it started in 22 early September, but I'm not confident of the date. So, 23 yeah, that could have been part of it at this time as 24 well. 25 Q. Okay. Do you know why Langley did not accept</p>

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<p style="text-align: right;">Page 130</p> <p>1 this offer?</p> <p>2 A. No.</p> <p>3 Q. And why didn't Midcoast make an offer to</p> <p>4 purchase the assets only?</p> <p>5 A. My understanding was Langley would not</p> <p>6 entertain an offer for assets only.</p> <p>7 Q. So, on the second page of this letter, where it</p> <p>8 talks about timing, "It is estimated that MRS can close</p> <p>9 this traction the later of September 30, 1999 or the</p> <p>10 receipt of HSR approval." So Hart-Scott-Rodino approval</p> <p>11 would have been required on this transaction?</p> <p>12 A. Yes, I believe so.</p> <p>13 Q. And was it the purchase price that invoked</p> <p>14 that -- that requirement or can you elaborate?</p> <p>15 A. Well --</p> <p>16 MR. STERN: There's a -- there's a size of</p> <p>17 person test and there's a size of transaction test and</p> <p>18 you have to meet both.</p> <p>19 MR. COFFIN: Okay.</p> <p>20 MR. STERN: And so this apparently was</p> <p>21 triggered both by the size of person and size of</p> <p>22 transaction. I think what he was saying earlier about</p> <p>23 K-Pipe, although the transaction met the size of</p> <p>24 transaction test, K-Pipe didn't meet the size of person</p> <p>25 test.</p>	<p style="text-align: right;">Page 132</p> <p>1 Exhibit 25 -- I said letter of intent. Is it</p> <p>2 necessarily a letter of intent or is it just a proposed</p> <p>3 offer letter?</p> <p>4 A. Not a lot of difference between the two.</p> <p>5 Q. Okay. Was there any discussion at this time</p> <p>6 about the Butcher interest?</p> <p>7 A. I don't recall. I don't recall when the</p> <p>8 Butcher interest was actually discussed and a major part</p> <p>9 of the negotiations.</p> <p>10 Q. Okay. Turn to Government Exhibit 26, please.</p> <p>11 This is a facsimile from Craig Hoffman of Fortrend</p> <p>12 International, LLC, to Bruce Snyder, "cc" Tom Palmisano?</p> <p>13 A. I see that, yes.</p> <p>14 Q. Okay. Do you ever have occasion to review this</p> <p>15 particular document?</p> <p>16 A. No, I don't recall ever seeing this.</p> <p>17 Q. I know the first page probably not. How about</p> <p>18 the second and third page?</p> <p>19 A. Don't recall seeing those pages either.</p> <p>20 Q. Okay. When did you first become aware or hear</p> <p>21 of the company named Fortrend?</p> <p>22 A. Mid September, about the same time I recall</p> <p>23 Price Waterhouse communications or talking with them.</p> <p>24 Q. Okay. Did Price Waterhouse mention Fortrend to</p> <p>25 you?</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. COFFIN: I see.</p> <p>2 MR. CROKE: And is that because K-Pipe</p> <p>3 didn't have any gas pipeline assets?</p> <p>4 MR. STERN: No, it's just the -- you look</p> <p>5 at the entire corporate family and what's the -- what's</p> <p>6 the size of that.</p> <p>7 MR. CROKE: In dollar terms?</p> <p>8 MR. STERN: Yeah.</p> <p>9 MR. CROKE: Value?</p> <p>10 MR. STERN: Value.</p> <p>11 MR. CROKE: I see.</p> <p>12 MR. COFFIN: Thank you.</p> <p>13 Q. (BY MR. COFFIN) On subparagraph (v), Value for</p> <p>14 MarGasCo, M-A-R-G-A-S-C-O, "The implicit value that MRS</p> <p>15 has allocated to MarGasCo is \$1,275,000," do you know</p> <p>16 how that was determined by Midcoast?</p> <p>17 A. No, I do not.</p> <p>18 Q. At what point was Price Waterhouse Coopers</p> <p>19 brought in to review the transaction?</p> <p>20 A. First recollection I have of Price Waterhouse's</p> <p>21 involvement was about mid September.</p> <p>22 Q. Okay.</p> <p>23 A. They could have been involved before that.</p> <p>24 That's the first recollection I have of them.</p> <p>25 Q. Now, with regard to this letter of intent,</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Not to me, no. I first heard the name from</p> <p>2 Richard Robert.</p> <p>3 Q. Did you ever meet with anyone from Fortrend</p> <p>4 personally?</p> <p>5 A. I met with their lawyers.</p> <p>6 Q. Who would that have been?</p> <p>7 A. Cynthia Morelli and --</p> <p>8 Q. Graham Taylor?</p> <p>9 A. Graham Taylor. I started to say Grant but</p> <p>10 Graham Taylor.</p> <p>11 Q. But you never had occasion to meet with Craig</p> <p>12 Hoffman or Jeff Furman?</p> <p>13 A. One of those individuals was in Kansas City at</p> <p>14 the same time I was there and we went to dinner two</p> <p>15 evenings together. I don't recall which one of the two.</p> <p>16 And that was the extent of it.</p> <p>17 So, other than that, no.</p> <p>18 Q. What did you know about Fortrend?</p> <p>19 A. Personally, I didn't know anything. What was</p> <p>20 communicated to me from -- from Richard Robert, that's</p> <p>21 the extent of what I knew.</p> <p>22 Q. Did you have any reservations about Midcoast</p> <p>23 doing business with Fortrend?</p> <p>24 A. No.</p> <p>25 Q. Do you know if anyone else did?</p>

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<p style="text-align: right;">Page 134</p> <p>1 A. I do not know.</p> <p>2 Q. Did you personally do any -- perform any due</p> <p>3 diligence with regard to Fortrend?</p> <p>4 A. I recall doing an Internet search, just a name</p> <p>5 search, to see if I could find anything on the</p> <p>6 companies; and that's the extent of what I recall</p> <p>7 personally doing.</p> <p>8 Q. Did you find anything?</p> <p>9 A. I remember finding the name and some articles</p> <p>10 and -- in the New York papers, and that's -- that was</p> <p>11 it. They -- they had been involved in acquisitions.</p> <p>12 Q. Okay. Get in the other binder document</p> <p>13 Government Exhibit 160, please.</p> <p>14 A. Okay.</p> <p>15 Q. This is a draft memorandum dated December 14 of</p> <p>16 1999 on Price Waterhouse Coopers letterhead, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it says To/Location, Midcoast file;</p> <p>19 From/Location, Gary Wilcox, Catharine Coffey?</p> <p>20 A. Correct.</p> <p>21 Q. Subject, Midcoast/K-Pipe Transaction, Tax</p> <p>22 Analysis?</p> <p>23 A. Yes.</p> <p>24 Q. Have you ever seen this document?</p> <p>25 A. I don't think so, no.</p>	<p style="text-align: right;">Page 136</p> <p>1 Is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. How about the rest of that paragraph, starting</p> <p>4 with "one option discussed"?</p> <p>5 A. Those are accurate, yes.</p> <p>6 Q. Okay. And this third paragraph begins,</p> <p>7 "Midcoast independently pursued the so-called 'Midco</p> <p>8 transaction' as a structural alternative"?</p> <p>9 A. I don't know that to be fact, factually</p> <p>10 correct.</p> <p>11 Q. Okay. Do you know what the phrase "structural</p> <p>12 alternative" means?</p> <p>13 A. I'd be guessing if I -- if I said yes, so...</p> <p>14 Q. All right. "On August 27, 1999, Midcoast and</p> <p>15 Price Waterhouse Coopers contacted Fortrend</p> <p>16 International, LLC." Is that true?</p> <p>17 A. I did not know that occurred then, no. Well, I</p> <p>18 can't say it's true or not true. I don't know.</p> <p>19 Q. Okay. But did Midcoast and Price Waterhouse</p> <p>20 contact Fortrend eventually, make the first initial</p> <p>21 contact?</p> <p>22 A. That's not my understanding.</p> <p>23 Q. What was your --</p> <p>24 A. My understanding is that Price Waterhouse</p> <p>25 introduced Fortrend to Midcoast.</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Okay.</p> <p>2 A. No, I have not.</p> <p>3 Q. Okay. Turn to page 2. And I know you haven't</p> <p>4 seen the document, but there are representations made in</p> <p>5 here that I want to ask you about, if you'll -- about</p> <p>6 the accuracy of them.</p> <p>7 A. Okay.</p> <p>8 Q. The top of the page 2, it says, "While Midcoast</p> <p>9 was aware of Langley's stated preference throughout the</p> <p>10 negotiation, it had hoped an asset deal could be</p> <p>11 negotiated." Was that correct at the time?</p> <p>12 A. That we hoped that, yes. We hoped all the</p> <p>13 other bidders would drop out and we were the only game</p> <p>14 in town and they would go by our rules.</p> <p>15 Q. Second paragraph it says, "In August 1999,</p> <p>16 Langley indicated to Midcoast that Midcoast's bid was</p> <p>17 lower than several of the other bidders -- other bids by</p> <p>18 approximately 20 million, but that he might be</p> <p>19 interested in entertaining creative structural ideas</p> <p>20 such as a revenue sharing arrangement." Is that an</p> <p>21 accurate statement?</p> <p>22 A. Yes.</p> <p>23 Q. And the next sentence says, "Midcoast began to</p> <p>24 consider how its bid could be made more attractive</p> <p>25 without significantly increasing the purchase price."</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Did you ever participate in a phone conference</p> <p>2 with Fortrend where it was the first initial contact</p> <p>3 with them?</p> <p>4 A. No.</p> <p>5 Q. Do you know if Mr. Robert did?</p> <p>6 A. I do not know.</p> <p>7 Q. Okay. "On August 30," the fourth paragraph,</p> <p>8 "1999, Fortrend provided some of its background</p> <p>9 information to Langley's tax advisors, Ernst & Young."</p> <p>10 Do you know if that's true or not?</p> <p>11 A. I do not know.</p> <p>12 Q. It goes on, "Over the next several weeks,</p> <p>13 several conversations took place among Fortrend,</p> <p>14 Midcoast, PWC and Ernst & Young regarding the viability</p> <p>15 of the Midco alternative." Do you recall if there were</p> <p>16 any meetings between the four of those?</p> <p>17 A. I never participated in any meetings where</p> <p>18 Ernst & Young was present or participated, so I -- not</p> <p>19 that I'm aware of.</p> <p>20 Q. Did you participate in any meetings with</p> <p>21 Fortrend --</p> <p>22 A. Yes.</p> <p>23 Q. -- where Midcoast and PWC were involved?</p> <p>24 A. Yes.</p> <p>25 Q. Where were those meetings?</p>

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<p style="text-align: right;">Page 138</p> <p>1 A. We met in Kansas City and we also had 2 telephonic meetings. 3 Q. And what kind of things were discussed with 4 them at that time? Did you ever hear of the term "Midco 5 alternative" or "Midco"? 6 A. This is the first time in reading it right now 7 today. 8 Q. Did you ever hear of the phrase "intermediary" 9 or anything like that? 10 A. I've heard that intermediary before, yes. 11 Q. In conjunction with this transaction? 12 A. Yes. 13 Q. Okay. And what did you hear about -- how was 14 it described to you? 15 A. Just -- how was it described to me? I don't 16 believe it was described. Just that Fortrend could be 17 an intermediary, what I recall. And I formed my own 18 conclusion to what that may or may not mean. I don't 19 recall ever discussing that with anyone. 20 Q. So did you hear the -- you heard the phrase 21 "intermediary"? 22 A. Correct. 23 Q. Okay. And you said that you thought Fortrend 24 might be an intermediary? 25 A. Yeah, I seem to recall discussion somewhere</p>	<p style="text-align: right;">Page 140</p> <p>1 was in fact correct, but that's what Langley told us. 2 Q. Okay. And then skip a sentence, it says, "PWC 3 discussed with Fortrend the price at which Fortrend 4 might sell assets of the Bishop Group to Midcoast if 5 Fortrend were to buy the stock of Bishop Group." Do you 6 recall that discussion? 7 A. No. 8 Q. Do you recall a similar discussion? 9 A. Not involving PWC. 10 Q. Do you -- 11 A. I remember talk -- 12 Q. Go ahead. 13 A. I remember talking, participating in a 14 discussion with Fortrend or Fortrend's lawyer, I should 15 say. When I say "Fortrend," do you interpret that to 16 mean their lawyer also or just the principals? 17 Q. Either, yeah. 18 A. Okay. Because when I say "Fortrend" -- 19 Q. Okay. 20 A. -- my only interaction with them was with their 21 lawyers and maybe very limited with their business 22 folks. 23 Q. And then the next sentence says, "Once Midcoast 24 decided to urge Fortrend to submit a bid, PWC discussed 25 briefly with Langley the due diligence process and</p>
<p style="text-align: right;">Page 139</p> <p>1 with someone, I don't know who it was -- 2 Q. Uh-huh. 3 A. -- where Fortrend and intermediary were in the 4 same sentence. 5 Q. Okay. And then you said you reached some 6 conclusion on your own. What was that conclusion? 7 A. That Fortrend, from my understanding of what 8 their past practices were, they would buy a large 9 company and sell off pieces of the company, and that we 10 could then pursue acquiring the pieces we wanted from 11 them. 12 Q. Okay. The fifth paragraph says, "On 13 September 13, 1999, PWC met with Midcoast in Kansas City 14 to determine whether -- to determine whether Fortrend 15 should be invited to enter the bidding process." Do you 16 recall that meeting or a meeting like that? 17 A. Yes. That's about the right date. I don't 18 know if that's the exact date, but there was a meeting 19 with them in Kansas City, yes. 20 Q. It says, "At the time, Langley was actively 21 discussing a transaction with at least three or four 22 potential purchasers." Is that correct? 23 A. That's what he told us. 24 Q. Do you know who they were? 25 A. I don't -- no. Matter of fact, I doubted that</p>	<p style="text-align: right;">Page 141</p> <p>1 closing schedule if a Midco alternative were pursued." 2 Did Midcoast urge Fortrend to submit a bid? 3 A. Did we urge them to? I don't know if we urged 4 them to. We hoped that someone would -- would buy 5 everything Langley had for sale so we could buy the 6 pieces we wanted. So, if that's urging them to, then 7 yes. 8 Q. It says -- the next sentence says, "The 9 specific timetable included and anticipated date of 10 September 22 for execution of letters of intent, and 11 anticipated closing dates of October 22. This schedule 12 was driven in part by the need for Fortrend to file for 13 HSR approval once a letter of intent between Fortrend 14 and Langley was signed." 15 As we discussed earlier, there was no HSR 16 approval required for that transaction; is that right? 17 A. I believe that's correct. 18 Q. "During September 13, PWC and Midcoast were 19 located in a separate conference room from Langley and 20 his representatives." Is that correct? 21 A. Yes. 22 Q. And why? Why was that? Why were you located 23 separately? 24 A. There were different bidders now in the 25 process. We were continuing to talk with Langley about</p>

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<p style="text-align: right;">Page 142</p> <p>1 a stock transaction, if anything could be worked out at 2 the price we could -- we could justify, and at the same 3 time we were also talking with the K-Pipe/Fortrend 4 people about if you're going to buy everything, we'd 5 like to buy some pieces from you. 6 Q. Now, is that something that's -- that's normal 7 in the business or is that something that you were -- 8 that was new to you, working with two potential sellers 9 at the same time? 10 A. No, there was another transaction we worked on 11 that -- it was after this time period, though. I don't 12 recall the year -- where the entity we were acquiring 13 the assets from had to in fact acquire the remainder of 14 the interest. They only owned a percentage. I don't 15 know if it was 50 percent, some percentage of the 16 assets. And before they could sell the assets, 17 100 percent of the assets to us, they had to acquire the 18 other 50 percent, and we were involved in reviewing 19 those documents, confirming that they in fact did 20 acquire the 50 -- remaining 50 percent interest so that 21 they owned 100 percent. So... 22 Q. But were you making a bid to that other 23 50 percent owner? 24 A. No, we were just buying from the one company, 25 with the expectation that they would acquire the other</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Okay. It says on the left, "Dennis to use 2 Price Waterhouse." Any idea? 3 A. No. Sorry. 4 Q. Okay. And then the top corner of Item 3 says, 5 "Roughly 20 -- is that 20 million -- "to 100 percent"? 6 A. 20M squared, is that -- 7 Q. Yeah. Does that mean 20 million? 8 A. I'm not sure. 9 Q. Okay. The next line item shows, "Our tax step 10 up if Dennis can get comfy." Do you know what that is? 11 A. No. 12 Q. Turn to page -- middle of that next page is 13 handwritten. Do you recognize that handwriting? 14 A. No, do not. 15 Q. There is a star. It says, "He wants us to take 16 the private placement risk." Do you know what that's 17 about? 18 A. I recall Langley telling us we could go raise 19 money if we'd sell some more stock. "Why don't you go 20 sell some more stock to raise some more money." 21 Q. Was that an alternative? 22 A. That was not a decision that I would have been 23 able to make or been involved in. That would have been 24 Richard and Dan and Chip, whether that's an alternative 25 or not. I just recall Langley saying that, and</p>
<p style="text-align: right;">Page 143</p> <p>1 50 percent and then sell us 100 percent. 2 Q. Okay. In this situation, though, this says you 3 were still actively pursuing the stocks or the asset 4 from Langley or the stock from K-Pipe? 5 A. Correct. We wanted to buy this asset. And we 6 hoped to do it, hoped to get it done, so we were 7 pursuing every avenue we could. 8 Q. Okay. Turn to Exhibit 27, please. 9 A. Okay. 10 Q. Do you know whose handwriting that might be? 11 A. I do not. 12 Q. It's not yours? 13 A. No, it is not mine. 14 Q. Are you familiar with any of the items listed 15 thereon? Item No. 1 discusses a plane? 16 A. I do recall a plane discussion and that 17 Langley's companies owned a plane. I do recall that, 18 yes. 19 Q. Item No. 2 says, "75/25. 75/25 upside, until 20 2X hicky"? 21 A. No idea what that means. 22 Q. No. 3 says, "Tax, use it or not. If yes, share 23 50 percent savings, plug back into GAP, or we adjust one 24 fourth of it now." 25 A. No idea.</p>	<p style="text-align: right;">Page 145</p> <p>1 typically that goes with private placement possibilities 2 of -- 3 Q. Okay. And turn to Government Exhibit 28. It 4 says Deal Point Sheet, M.C. Ruby, Attorney/Client 5 Privilege Confidential. Are you familiar with this 6 document? 7 A. No. 8 Q. Item No. 3 says, "Gap to be closed. A., Hard 9 23 million, \$1.00 for \$1.00 up front, no risk of 10 performance is taken; or, B., Soft, 46 million, \$1.00 11 down to \$1.00 up, risk of performance is taken." Do you 12 know what that means or what that is addressing? 13 A. I'd be guessing if I did, if I answered that. 14 I -- I don't know in fact what's -- Langley wanted more 15 money. Those were a couple options of perhaps getting 16 more money. 17 Q. What's the hard and soft? 18 A. Typically, hard -- I mean, I don't know what -- 19 exactly what it means here, but my understanding when I 20 am accustomed to using the word "hard," it's real 21 dollars, I want hard money, give me real money; whereas, 22 soft money, there's an opportunity to make 46 million or 23 an opportunity to make zero, and so it's soft money. If 24 the person is willing to take the upside risk, then 25 they'll make a whole lot more, understanding they may</p>

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<p style="text-align: right;">Page 146</p> <p>1 get zero out of it.</p> <p>2 Q. What's item C? Have you ever heard the term</p> <p>3 "Ruby Diablo"?</p> <p>4 A. Never.</p> <p>5 Q. B, it says, "If PWC \$5 million; indemnity from</p> <p>6 M.C." Do you know what that is?</p> <p>7 A. No.</p> <p>8 Q. It says "step up," handwritten?</p> <p>9 A. Yeah, I see that, but, no, I don't know what</p> <p>10 that is.</p> <p>11 Q. And "capital loss generates"?</p> <p>12 A. I see that writing on there. I don't recognize</p> <p>13 it.</p> <p>14 Q. Okay. Item number -- Government Exhibit 30.</p> <p>15 A. Okay.</p> <p>16 Q. It says Summary of Essential Modifications to</p> <p>17 Merger Agreement Presented by Midcoast. Do you</p> <p>18 recognize this handwriting?</p> <p>19 A. I do not recognize the handwriting.</p> <p>20 Q. Have you seen the document before?</p> <p>21 A. No.</p> <p>22 Q. Item No. 7 says, "There may be an issue as to</p> <p>23 whether stockholder receiving an adequate tax letter is</p> <p>24 a condition to stockholder closing and whether Midcoast</p> <p>25 representation and warranty as to non-interference with</p>	<p style="text-align: right;">Page 148</p> <p>1 A. I have not.</p> <p>2 Q. Okay. Do you know -- so it appears to be a</p> <p>3 mutual confidentiality agreement being sent to Fortrend,</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. By the Bishop Group, Bishop Group's attorney.</p> <p>7 So my question is: do you know why Tom Palmisano would</p> <p>8 be getting a copy of this?</p> <p>9 A. I do not.</p> <p>10 Q. Now, back on Government Exhibit 160, which is</p> <p>11 the -- yeah, the reason we're going back and forth is</p> <p>12 we're trying to follow the chronology of events here.</p> <p>13 A. Okay.</p> <p>14 Q. On the third paragraph of page 3 of Government</p> <p>15 Exhibit 160 --</p> <p>16 A. Yes.</p> <p>17 Q. -- third paragraph, it says, "Midcoast did not</p> <p>18 formally withdraw its bid to purchase the stock of</p> <p>19 Bishop Group. Langley continued to have discussions</p> <p>20 with several other potential buyers. Midcoast was</p> <p>21 concerned that withdrawing its bid would render it</p> <p>22 unable to go forward with the stock purchase in the</p> <p>23 event that Fortrend was unable to proceed with the stock</p> <p>24 purchase transaction." Is that an accurate statement?</p> <p>25 A. Yes. Well -- yes, it's accurate. Do I know it</p>
<p style="text-align: right;">Page 147</p> <p>1 stockholder's tax-free reorganization and capital gains/</p> <p>2 loss treatment is secured by an unperfected lien against</p> <p>3 BPC/BGT stock, SPCLP partnership interests and KPC</p> <p>4 assets." Do you know what that paragraph is discussing?</p> <p>5 A. I do not.</p> <p>6 Q. Paragraph -- I'm sorry, Government Exhibit</p> <p>7 35 --</p> <p>8 A. Ask me about 31. I've seen it before.</p> <p>9 Q. All right. Tell me about Government</p> <p>10 Exhibit 31.</p> <p>11 A. No, just I've seen it before. I haven't seen</p> <p>12 the other ones. Here's one I recognize. I have seen</p> <p>13 this page before.</p> <p>14 Q. All right. Well, I'm not going to ask you any</p> <p>15 questions about it.</p> <p>16 Government Exhibit 35, a facsimile from</p> <p>17 Bryan Cave, LLP, from James P. Pryde, Esquire, to Tom</p> <p>18 Palmisano. And he's with PWC; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. Did you work with Palmisano quite a bit on this</p> <p>21 transaction?</p> <p>22 A. I didn't. I had a couple conversations with</p> <p>23 him perhaps.</p> <p>24 Q. And Craig Hoffman, the fax is also to Craig</p> <p>25 Hoffman. Have you seen this document before?</p>	<p style="text-align: right;">Page 149</p> <p>1 to be -- just a moment.</p> <p>2 The second sentence, "Langley continued to</p> <p>3 have discussions with several other potential bidders,"</p> <p>4 I -- I don't know that to be accurate. All I know is</p> <p>5 that Langley told us that was happening.</p> <p>6 Q. Okay. "Accordingly, Midcoast did not cease its</p> <p>7 due diligence review of the Bishop Group, which was</p> <p>8 already in progress. The other potential purchasers</p> <p>9 also continued their due diligence events." Who were</p> <p>10 the other potential purchasers?</p> <p>11 A. We don't know. I did not know.</p> <p>12 Q. Okay.</p> <p>13 A. Earlier we read some minutes where there was</p> <p>14 something in some meeting minutes about some names. I</p> <p>15 had not heard those names before.</p> <p>16 Q. Okay. And this is probably as of the middle of</p> <p>17 September, so you weren't aware at that time either?</p> <p>18 A. No. Matter of fact, every time we went back to</p> <p>19 the data room, we looked for papers and cards, trying to</p> <p>20 identify if someone left a card, and the only thing we</p> <p>21 found was a card from someone at Enron, which we -- Ron</p> <p>22 Chachere and I speculated someone from Enron had been</p> <p>23 there.</p> <p>24 Q. And then it says, "However, as of September 13,</p> <p>25 1999, Midcoast did not engage in any further discussions</p>

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<p style="text-align: right;">Page 150</p> <p>1 with Langley or his representatives regarding a purchase 2 of Bishop Group stock." Is that a correct statement? 3 A. I don't believe so, no. 4 Q. Okay. Tell me why it's not correct. 5 A. That's -- that date, September 13th, is about 6 the time I believe Fortrend entered the transaction, 7 from -- based on my knowledge. 8 Q. Uh-huh. 9 A. I recall going to Kansas City to continue due 10 diligence and walking into the data room and meeting 11 Cynthia Morelli for the first time. And I asked her who 12 she is and what she's doing there. And that -- that -- 13 she was outside counsel for Fortrend and had been there 14 doing due diligence work. 15 We continued even after that process 16 negotiating with Langley a stock deal, in the event 17 K-Pipe decided not to pursue or we were the only bidder 18 left in the world that wanted the assets, any number of 19 possibilities. So I believe we continued negotiating 20 the stock purchase deal for perhaps a week after that, 21 maybe longer. 22 Q. Okay. And how is it that you're able to gauge 23 the dates? 24 A. The timing of -- closing was November -- going 25 backwards from there to when we first started, to the</p>	<p style="text-align: right;">Page 152</p> <p>1 diligence-wise? 2 A. What did we do differently? We eliminated some 3 of the risk factors that we had earlier considered. 4 Q. Well, you were at Kansas City when this 5 conversation took place with Langley, right? 6 A. Yes. 7 Q. And I asked if you packed your stuff up and 8 left and you said no. So I'm wondering, you know, how 9 did your focus change from a stock purchase to an asset 10 purchase at that time and what -- how did you change, 11 shift gears at that time? Was it any different? 12 A. We did not pursue due diligence on some assets 13 that we were not interested in buying now. Dennis 14 Langley's corporate structure, he had many, many other 15 interests, other companies that he had owned at 16 different stages of his career, that had merged 17 companies in. There was an ice skating rink, there were 18 wind power, all -- multiple different things. He had a 19 construction company. He had lots of business ventures. 20 And these different business ventures had been merged 21 into some of the companies that he was trying to sell. 22 We were continually trying to find out 23 more information on these companies, and he was very, I 24 don't know, standoff-ish. "The documents will be here 25 tomorrow." They'd never show up. "Oh, they're coming.</p>
<p style="text-align: right;">Page 151</p> <p>1 different meetings, so I'm guessing it was about the 2 middle of September. 3 Q. But do you have anything you can tie it to to 4 identify if September 13th, you did or didn't? I mean, 5 there had to become a point in time where you guys quit 6 negotiating the stock purchase, right? 7 A. Oh, we did, yes. 8 Q. When would that have been? 9 A. When Dennis Langley told us he wasn't going to 10 negotiate with us any more. 11 Q. Okay. And when did that occur? 12 A. That's what I was trying to get. It was two or 13 three weeks before closing of the tran -- of our 14 acquisition. So that would have been what, early 15 October perhaps. 16 Q. Was it a verbal statement or written? 17 A. It was a verbal statement. 18 Q. And it happened while you guys, the Midcoast 19 group, was performing due diligence in Kansas City? 20 A. Correct. 21 Q. So, did you just pack your things up and leave 22 at that point? 23 A. No. Then we turned our attention strictly to 24 the acquisition from K-Pipe. 25 Q. Okay. So what did you do differently due</p>	<p style="text-align: right;">Page 153</p> <p>1 They're in storage. They're in warehouses." Excuse 2 after excuse. We would not see the due diligence 3 documents that we were -- were interested in. 4 When we were no longer involved in the 5 stock transaction portion of this, at that stage I 6 didn't care about his construction company, I didn't 7 care about his skating rink, because I wasn't going to 8 buy those anymore. So that -- it changed from that 9 standpoint, that I was not as insistent on getting 10 litigation files on some matters that were unrelated to 11 the assets. 12 Q. Okay. Do you remember again the date that that 13 may have happened to occur? 14 A. No, I do not exactly. 15 Q. Sometime after September 13th of '99? 16 A. Yes. 17 Q. Go to Exhibit 37. 18 A. Okay. 19 Q. This is -- it begins with an e-mail from Becky 20 Davis at Bryan Cave. Do you recognize that name? 21 A. I do not. 22 Q. Okay. To Tom Palmisano of PWC; is that right? 23 A. Yes. 24 Q. It's dated -- if you look at the top, I think 25 there's a -- that's a later transaction?</p>

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<p>1 A. Yeah, I think --</p> <p>2 Q. Looks like a later transmission of this e-mail</p> <p>3 I think that PWC made to have these documents copied,</p> <p>4 but the one I want to focus on is the e-mail between</p> <p>5 Becky Davis and Tom Palmisano dated September 12, '99.</p> <p>6 A. Correct, I see that.</p> <p>7 Q. And the subject says Stock Purchase Agreement,</p> <p>8 and I'll represent to you that this was provided by PWC.</p> <p>9 Following it is a -- is the stock purchase agreement</p> <p>10 between -- it was previously the Midcoast stock</p> <p>11 agreement between Bishop and -- I'm sorry, between</p> <p>12 Langley and Bishop Group and Midcoast, but now it's been</p> <p>13 redlined and inserted in place of Midcoast is Fortrend</p> <p>14 International, LLC, correct?</p> <p>15 A. I see that, yes.</p> <p>16 Q. And this was transmitted to Tom Palmisano on</p> <p>17 September 12 of '99. Any idea why Tom Palmisano is</p> <p>18 getting a copy of this?</p> <p>19 A. I have no idea.</p> <p>20 Q. Was Palmisano representing or PWC representing</p> <p>21 Fortrend at the time?</p> <p>22 A. Not as far as I knew.</p> <p>23 Q. Do you know if Palmisano gave Midcoast a copy</p> <p>24 of this at that time?</p> <p>25 A. I do not know. I have not seen this document</p>	<p>1 Q. Have you ever seen a similar type document in</p> <p>2 conjunction with any other acquisitions by Midcoast?</p> <p>3 A. Yes, I'm sure I have.</p> <p>4 Q. Did you see a document, any other similar type</p> <p>5 documents with regard to the acquisition of or the</p> <p>6 attempted acquisition of either the stock of Langley or</p> <p>7 stock owned by Langley or the assets of K-Pipe?</p> <p>8 A. I don't believe so. When these type of</p> <p>9 negotiations would occur, I would excuse myself and go</p> <p>10 do the rest of the due diligence that I needed to do.</p> <p>11 Q. This was along the lines of Mr. Robert's?</p> <p>12 A. Right. I was not a number cruncher at all.</p> <p>13 Q. Do you know what "Alternate Bogie" means?</p> <p>14 A. No.</p> <p>15 Q. Okay. Take a look at Government Exhibit 41.</p> <p>16 A. Okay.</p> <p>17 Q. This is a facsimile transmission sheet from</p> <p>18 Fortrend International to you; is that right?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And it looks like it's from Craig Hoffman; is</p> <p>21 that right?</p> <p>22 A. Yes.</p> <p>23 Q. And he's transmitting to you the drafts, draft</p> <p>24 confidentiality agreements, and it looks like some</p> <p>25 information on the company, on Fortrend; is that</p>
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<p>1 before.</p> <p>2 Q. Okay. Government Exhibit 38 is a letter from</p> <p>3 Chase to Craig Hoffman of Fortrend International, dated</p> <p>4 September 16 of '99, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And it looks like the same letter that was sent</p> <p>7 to Midcoast regarding the procedures for the submission</p> <p>8 and the bid or an offer; is that right?</p> <p>9 A. It looks similar.</p> <p>10 Q. Okay. Did you ever have occasion to review</p> <p>11 this document?</p> <p>12 A. No, sir.</p> <p>13 Q. Turn to Government Exhibit 40.</p> <p>14 A. Okay.</p> <p>15 Q. This looks like a spreadsheet and it has a</p> <p>16 Mid 2.1-1692 Bates number on the bottom right, if you --</p> <p>17 A. I see it, yes.</p> <p>18 Q. Okay. So that was provided by Midcoast. Have</p> <p>19 you ever seen this document or a similar document?</p> <p>20 A. No, sir.</p> <p>21 Q. This appears to be a spreadsheet entitled</p> <p>22 Break-Even Alternatives, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you've never reviewed anything like this?</p> <p>25 A. No, sir.</p>	<p>1 correct?</p> <p>2 A. That's what the cover page says.</p> <p>3 Q. I think we're missing a few pages, if you look</p> <p>4 at the fax numbers or the fax page number at the top.</p> <p>5 A. Correct. Appears pages 2 and 3 are missing.</p> <p>6 Q. Right. And maybe the -- the confidentiality</p> <p>7 agreement, right?</p> <p>8 A. Right.</p> <p>9 Q. And this document, I think, was prepared by or</p> <p>10 was submitted by Midcoast, because it has Midcoast's</p> <p>11 Bates number at the bottom right.</p> <p>12 MR. COFFIN: Emily, do you know if -- what</p> <p>13 happened to pages 2 and 3?</p> <p>14 MS. PIPKIN: I can tell you that I was</p> <p>15 looking at this document recently and the same two pages</p> <p>16 are missing from ours.</p> <p>17 MR. COFFIN: Okay.</p> <p>18 MS. PIPKIN: Which is why this has the</p> <p>19 Midcoast Bates numbers.</p> <p>20 MR. COFFIN: So you haven't found it</p> <p>21 anywhere in your records, is that right, pages 2 and 3?</p> <p>22 MR. STERN: Look at your Exhibit 42.</p> <p>23 MS. PIPKIN: But the Midcoast numbers</p> <p>24 don't fit into this document.</p> <p>25 MR. STERN: I understand. I understand.</p>

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 158</p> <p>1 MR. COFFIN: Looks like they were pulled 2 out maybe and just put in behind. Okay. 3 Q. (BY MR. COFFIN) So, Mr. Kaitson, did you have 4 an opportunity to review these documents associated with 5 Government Exhibit 41? 6 A. Yes, I remember receiving these. 7 Q. Okay. So you did do a review of the background 8 information on Fortrend? 9 A. I see it attached to the back here. I don't 10 remember reading that document before, but it could have 11 been attached to the fax. I just don't recall it. 12 Q. Okay. 13 A. Obviously, it was attached, but I don't recall 14 seeing it before. 15 Q. Okay. And there's a page that says Summary of 16 Major Corporate Transactions since 1990? 17 A. I do see that, yes. 18 Q. Okay. And it lists the year on the left, the 19 type of transaction, industry, size, built-in gain. 20 What's the built-in gain portion, do you know? 21 A. No, I don't. 22 Q. Okay. Government Exhibit 42, as Mr. Stern has 23 pointed out, appears to be the confidentiality agreement 24 that was signed and sent back to Fortrend? 25 A. Yes, it is.</p>	<p style="text-align: right;">Page 160</p> <p>1 as part of their acquisition of whatever they're selling 2 to us. 3 Q. Okay. Was it not something separately that 4 they provided to you, do you recall? 5 A. Not that I recall. This -- it's -- that's a 6 common paragraph for confidentiality agreements. 7 Q. Okay. And it says "will be used solely for the 8 purpose of evaluating the possible use of the 9 transaction." What's -- what does it mean by "use of 10 the transaction"? 11 A. The word "use" seems a little out of place 12 there. It's just evaluating the transaction. 13 Q. The third bullet point says, "You recognize and 14 acknowledge the competitive value and confidential 15 nature of the evaluation material and the irreparable 16 damage that could result if information contained 17 therein is disclosed to any third-party in violation of 18 this agreement." It just seems to me in reviewing this 19 letter that the evaluation material referred to may be 20 some more documents that they actually provided to you 21 which described how the transaction would be used. Do 22 you not recall that? 23 A. I do not recall receiving any of that, anything 24 like that. 25 Q. Okay. 43, Government Exhibit 43, same type of</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Whose handwriting is on this document? 2 A. Most of it is mine. 3 Q. Doing your job, right? 4 A. Yes. 5 Q. So you reviewed and approved this document? 6 A. Correct. And it actually looks like I made 7 some insertions into the document. 8 Q. Okay. In the first bullet point paragraph on 9 the front page it talks about "Written information 10 provided to you, as well as any additional information 11 disclosed to you or any of your representatives which 12 contains or otherwise reflects or is generated from such 13 information or documents," and it has in parenthesis 14 (the evaluation material), "will be used solely for the 15 purpose of evaluating the possible use of the 16 transaction by you and your clients and all the 17 evaluation material will be kept confidential by you and 18 your representatives," et cetera? 19 A. Correct. 20 Q. What was the evaluation material? 21 A. Due diligence material. Evaluation material 22 would be everything that we review as part of any 23 transaction. So this transaction, it would not only be 24 what K-Pipe or Fortrend provides to us directly, but any 25 documents that they are going to acquire or enter into</p>	<p style="text-align: right;">Page 161</p> <p>1 spreadsheet we saw earlier. Are you familiar with 2 anything on this page? 3 A. No, I have not seen this page before. 4 Q. Okay. Still no answer to what the "Alternate 5 Bogie" is? 6 A. Nope, no idea. 7 Q. And any idea what was redacted there? Looks 8 like something was marked out in the last column at the 9 top. 10 A. No, I don't know. 11 MR. STERN: I think that was the original 12 document. It's not a redaction. 13 MR. COFFIN: Say that again. 14 MR. STERN: It's not a redaction in 15 connection with the production. 16 MR. COFFIN: Oh, okay. It's not a 17 redaction by you guys? 18 MR. STERN: It's just somebody marked it 19 out. 20 MR. COFFIN: Okay. 21 Q. (BY MR. COFFIN) Can you look at the bottom of 22 that analysis? 23 A. Yes. 24 Q. Do you know what a gap closer is or what's the 25 gap to be closed? What does that represent?</p>

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Witness: Emmanuel (Chris) Kaitson

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<p>1 MR. STERN: Objection, form. 2 A. I'd be guessing because I really don't know. 3 Q. (BY MR. COFFIN) Okay. 4 Okay. Government Exhibit 44. 5 MR. STERN: This is the key to the case. 6 MR. CROKE: Everybody is going to get out 7 their glasses for this one. 8 MR. STERN: It is. 9 Q. (BY MR. COFFIN) What's the -- have you seen 10 this document before? 11 A. Give me a moment. The first page does not look 12 familiar at all. 13 Q. Okay. 14 A. I saw documents of this style or type -- 15 Q. Uh-huh. 16 A. -- that Richard Robert had prepared. I don't 17 know if this is one of his or not. 18 Q. Okay. 19 A. But this looks like a type of a document that 20 Richard prepared. 21 Q. Any -- did you place any reliance on these type 22 of spreadsheets in conducting your due diligence? 23 A. I never looked at them. 24 Q. Okay. 25 A. I gave him input on whatever areas I was</p>	<p>1 A. Okay. 2 Q. Can you -- if you look on this document, does 3 it -- on these dates, Mr. Chachere gives you a pretty 4 good chronology of events. Can you tell me when it was 5 exactly that you quit negotiating the stock purchase 6 with Langley? Does this document help you? 7 MR. STERN: It's a lengthy document. Why 8 don't we take a break, go off the record, let him look 9 at it. 10 MR. COFFIN: Okay. 11 (Recess from 2:52 p.m. to 3:01 p.m.) 12 MR. COFFIN: Back on the record. 13 Q. (BY MR. COFFIN) Mr. Kaitson, have you had an 14 opportunity to review Government Exhibit 150? 15 A. Yes. 16 Q. And have you had any -- did anything in there 17 refresh your recollection as to when exactly it was 18 Midcoast quit negotiating or ceased negotiating the 19 stock purchase from Langley? 20 A. Relying strictly on the document, it appears 21 that about the middle of October we stopped negotiating 22 the purchase, the stock deal. And that's, I think, in 23 line with what I had said earlier, it was about two or 24 three weeks before the actual closing. So I think this 25 kind of confirms what I think I earlier said.</p>
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<p>1 responsible for and he put the numbers in the formula. 2 Q. Okay. Government Exhibit 50, are you familiar 3 with this document? And I don't know if the four pages 4 in that exhibit go together, but they appear to, so I 5 stapled them. Are you familiar with any of these 6 documents? 7 A. No, I don't -- I don't recognize these either, 8 no, sir. 9 Q. What's the -- on Government Exhibit 50, on the 10 first page, the Make Whole Cost Sharing, there's a lot 11 of discussion about a "make whole premium." Are you 12 familiar with that phrase? 13 A. I'm familiar with the phrase "make whole." 14 Q. As it related to this case, do you recall what 15 it was? 16 A. I don't relate it to this case, no. 17 Q. You don't recall? 18 A. No, I don't recall. 19 Q. Okay. Government Exhibit 51, please. Are you 20 familiar with this document? It says Kansas Pipeline 21 Company, Disclosure Statement, Depreciation Difference, 22 Carryover Basis versus Purchased Basis. 23 A. I do not recognize this, no. 24 Q. Okay. Go to Government Exhibit 150. That's 25 Mr. Chachere's invoice.</p>	<p>1 Q. Okay. Government Exhibit 60? 2 A. Yes, sir. 3 Q. This is from Chase Bank, a letter dated 4 September 29, 1999, to Chris Kaitson. "Per your 5 request, please find attached three additional copies of 6 the Confidential Offering Memorandum." Do you recall 7 making that request to Chase? 8 A. Yes, I do. 9 Q. And why did you make a request for three 10 additional copies? 11 A. We were going to use those copies as part of 12 our Hart-Scott-Rodino filing. 13 Q. And the Hart-Scott-Rodino filing with regard to 14 the stock purchase or the asset purchase? 15 A. No, the asset purchase. 16 Q. Okay. Was there -- so, by that time, had the 17 filing been prepared? 18 A. I think it was being prepared. Seems like it 19 was filed early October. I don't remember exact dates, 20 but sometime early October I think the filing was 21 completed. 22 Q. Okay. And why -- or how long did it typically 23 take to get HSR approval? 24 A. Three to four weeks. Thirty days is the 25 default time period. If you receive no response within</p>

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 166</p> <p>1 the 30-day period, then at the end of 30 days the 2 transaction is automatically approved. In virtually all 3 cases, we asked for early determination, asking them to 4 decide in two or three weeks. It's common to get an 5 approval done in three weeks. 6 Q. Okay. Now, was it important to begin that 7 process as of the end of September, early October? 8 A. No, we could have started at any time. It's 9 just -- it takes a good week or ten days to prepare the 10 documents and then gather all the information you need 11 to make the filings. 12 Q. Who actually did that work? 13 A. Ron Chachere did. 14 Q. Okay. 15 A. Generally speaking, I would gather the 16 documents to provide to him and he would actually fill 17 out the forms; but I would gather a significant portion 18 of the documents internally for him to provide. 19 Q. Was that an easy process or onerous process? 20 A. Gathering documents is very challenging. 21 Getting documents from different individuals, 22 identifying everybody involved with the transaction, it 23 just took time. 24 Q. Okay. Was that -- would the filing have been 25 any different if it was a stock purchase versus an asset</p>	<p style="text-align: right;">Page 168</p> <p>1 intent dated September 30 of '99, it would seem that at 2 this point Midcoast was pretty serious about buying the 3 assets of -- of K-Pipe, is that correct, or buying the 4 assets from K-Pipe Holdings Partners? 5 A. Correct. 6 Q. Was there a condition in here saying that they 7 would only buy them if K-Pipe went through with its 8 purchase of the stock? 9 A. It's not really conditioned, but when they -- 10 when we say that we are going to buy Kansas Pipeline 11 Company, they can only sell it to us if they own it. So 12 it's implied that they would have to acquire it before 13 they could sell it to us. 14 Q. So even after Midcoast executed this letter of 15 intent, it still continued to negotiate the stock 16 purchase from Langley at the same time? 17 A. Yes, that was required by Mr. Langley. 18 Q. And then Government Exhibit 70, these are the 19 board of directors meeting minutes of Midcoast Energy 20 Resources, Inc. dated October 7th of '99, correct? 21 A. Correct. 22 Q. And you have not had occasion to review this; 23 is that correct? 24 A. That's correct. 25 Q. Okay. Go to Government Exhibit 71.</p>
<p style="text-align: right;">Page 167</p> <p>1 purchase? 2 A. No. 3 Q. It would have been the same type of filing 4 or -- 5 A. Correct. 6 Q. Okay. It's just, I guess, on the application, 7 would there be some type of description of the 8 transaction or -- 9 A. Yes, there is a description of the transaction 10 that goes on there, so it would be stated slightly 11 different. So... 12 Q. Okay. Government Exhibit 66, that's a letter 13 of intent to -- between Midcoast and K-Pipe Holdings 14 Partners; is that correct? 15 A. Yes. 16 Q. Dated September 30 of '99, but it looks like it 17 was signed by Mr. Tutcher on October 1 of '99? 18 A. Correct. 19 Q. Did you review this -- 20 A. Yes. 21 Q. -- document? 22 The CK next to Mr. Tutcher's name is your 23 initials? 24 A. That's correct. 25 Q. So, at this point, I mean, with the letter of</p>	<p style="text-align: right;">Page 169</p> <p>1 A. Okay. 2 Q. This is a facsimile from Chachere -- 3 A. Yes. 4 Q. -- to Tino Monaldo, Esquire. Who was Tino 5 Monaldo? 6 A. Tino Monaldo was outside for Langley. I 7 believe Langley was his only client. But he was not an 8 employee; he was in private practice for himself. 9 Q. He was also the -- he was negotiating on behalf 10 of Langley on the sale of the Bishop Group stock, 11 though, correct? 12 A. Correct. We considered him Langley's -- 13 Langley's attorney. 14 Q. Okay. 15 A. Along with the Bryan Cave folks. 16 Q. And this is transmitting certain changes to the 17 stock purchase agreement and schedules thereto, correct? 18 A. Yes. 19 Q. Now, is this the stock purchase agreement 20 between Langley and K-Pipe or the stock purchase 21 agreement between Langley and Midcoast? 22 A. From the document here, I don't think I can 23 tell. 24 Q. Well, it would have to be -- would it have to 25 be between Bishop and Midcoast?</p>

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<p style="text-align: right;">Page 170</p> <p>1 A. I believe it's the doc -- I believe it's the 2 document between Midcoast and Bishop. But with the 3 first page missing and the signature page missing, I 4 don't see the names of any companies on the document. 5 I'm not supposed to guess, but that's my guess. 6 Q. Look at the DOJ Bates No. 950, that page. 7 A. Yes, uh-huh. 8 Q. There's some -- and 8.14 is the section, Change 9 of Control. 10 A. I see that. 11 Q. There's been quite a bit of redlining there, 12 but it now reads to say, "Should buyer sell or assign 13 more than 50 percent of either, (a), buyer's interest in 14 Kansas Pipeline Company or, (b), KPC's pipeline assets 15 to a non-affiliated entity, then a change of control 16 shall be deemed to have occurred. Upon a change of 17 control, unless buyer and the person to whom buyer has 18 sold either the interest in KPC or KPC's pipeline 19 assets," defined as New Party, "shall execute and 20 deliver to stockholder the assumption agreement 21 substantially in the form of Schedule 8.14 hereto." 22 So, it looks like it contemplates the sale 23 of the assets after the stock purchase; would you agree? 24 MR. STERN: Objection, form. 25 A. No, I would not agree.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Okay. So prior to sending a revised blacklined 2 stock purchase agreement to your party, to Midcoast, 3 through Chachere and you; is that correct? 4 A. Correct. 5 Q. Once again, is that stock purchase agreement -- 6 do you know if the stock purchase agreement was the 7 stock purchase agreement between Midcoast and Langley or 8 was that the one between K-Pipe and Langley? 9 A. I believe this would be between Midcoast and 10 Langley, because if it involved K-Pipe in any way, the 11 K-Pipe attorney would be on there. 12 Q. Okay. Look at Government Exhibit 73. This is 13 an e-mail from Pryde to you, Ron Chachere. Who is Lori 14 Brewer? 15 A. No idea. 16 Q. Okay. And lwoods@kansaspipeline.com, any idea? 17 A. No idea. 18 Q. Therecia, T-H-E-R-E-C-I-A, Johnson? 19 A. Once again, no idea. 20 Q. Tino Monaldo? 21 A. I recognize Tino's name. 22 Q. It says, "Per Tino's conversations with Dennis 23 and Chris, I have not yet revised the signature blocks." 24 So they were sending you a revised signature agreement. 25 If you turn the page, it looks like the parties that</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. (BY MR. COFFIN) Okay. Why would you not agree? 2 A. My recollection of this, this timing, was 3 Dennis Langley wanted some comfort that he had all the 4 guarantees and whatever successor owners -- that all 5 successor owners would honor the project development 6 agreement and provide guarantees of performances. So I 7 don't believe this had anything to do with the K-Pipe 8 transaction -- 9 Q. Okay. 10 A. -- as I see the word "change" out to the side. 11 Q. Huh? 12 A. I think that's what the word "change" is next 13 to that. This was a common problem we had with the 14 Bryan Cave folks. We would submit changes to a document 15 and they would decide if they wanted to make changes or 16 not. They would not return the mark-up document, but 17 just give us a new redline, and we had no idea if they 18 had honored all our changes or not. 19 Q. Okay. And then Government Exhibit 72, it looks 20 like an e-mail from Mr. Pryde to Chachere, you, Tino 21 Monaldo and Y. Korb. Is that Yvette? 22 A. I believe it would be Yvette Korb, yes. 23 Q. Who was Yvette Korb? 24 A. Yvette was an employee or a vice president of 25 the Bishop Group.</p>	<p style="text-align: right;">Page 173</p> <p>1 executed it were K-Pipe Holding Partners and with 2 Langley, Management Resources Group? 3 A. Correct. 4 Q. Okay. And why -- why are you guys getting a 5 revised security agreement that related to K-Pipe? 6 A. This would have been part of our continued due 7 diligence. If the assets we would be acquiring from 8 K-Pipe have a lien on them, security interest granted, 9 then we would need to know that we're buying assets with 10 a lien on them. 11 Q. Wouldn't you get that information from K-Pipe 12 instead of from Pryde? 13 A. Well, if Pryde is the one drafting the 14 agreement between Langley and K-Pipe, and we're doing 15 due diligence, then Pryde can either give the document 16 to Cynthia Morelli and she can forward it to us or Pryde 17 can forward it to us directly as part of our due 18 diligence, either one of the two. 19 Q. And that e-mail is dated October 11 of '99, 20 correct? 21 A. Correct. 22 Q. If you go to Exhibit 150, which is Chachere's 23 invoice, the October 11 entry -- 24 A. Yes. 25 Q. -- about two-thirds of the way down it says,</p>

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<p style="text-align: right;">Page 174</p> <p>1 "Receipt and review of e-mail of 9-30-99 draft of stock 2 purchase agreement from Attorney Morelli; various 3 further telephone conversations with Attorney Monaldo 4 and Attorney Kaitson; called to and discussion with Don 5 Whittington as to settlement agreement." Again, why is 6 Chachere receiving and reviewing the 9-30 draft of the 7 stock purchase agreement from Morelli? 8 A. It goes back to what -- same reason for the 9 security agreement. That would be part of the due 10 diligence, that we would need to know what K-Pipe is in 11 fact purchasing. 12 Q. So, did you have input on the -- the -- did 13 Midcoast have input in terms of the stock purchase 14 agreement between Langley and K-Pipe? 15 A. We were able to make suggestions to K-Pipe on 16 what would be acceptable to us and what would not be 17 acceptable to us. 18 Q. And those changes were communicated to Morelli 19 and her firm or to James Pryde and his firm? 20 A. Could have been to either. In some cases, 21 both. If we were to make a suggestion to Morelli and 22 she was fine with the suggestion, it could have gone 23 directly back to -- to Pryde. 24 Q. Was there an open line of communication between 25 Pryde, Morelli, and Midcoast's attorneys?</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. Okay. The last sentence of that paragraph 2 says, "Midcoast did not want to purchase the Butcher 3 interest currently because of rate base concerns." What 4 were those rate base concerns? 5 A. I -- 6 Q. Let me back up. Is that a correct statement, 7 first of all? 8 A. That was a discussion. I -- was it a concern? 9 Yes, it was a discussion and concern, the concern being 10 that because the Butcher interest was an expense to 11 Kansas Pipeline Company and, therefore, was an expense 12 that was part of the FERC rate case filing of Kansas 13 Pipeline Company, we wanted to try and be able to 14 recover that expense. We believed that if Kansas 15 Pipeline Company owned that expense, that it may not be 16 recoverable. 17 Q. Okay. I don't understand. I thought we 18 determined earlier it was kind of a wash because it was 19 an obligation by Kansas Pipeline, but yet Kansas 20 Pipeline owned the right to receive the revenue interest 21 as well? 22 MR. STERN: Objection, form. 23 A. Yeah, it would have been a wash if the -- if 24 the parent companies were the same. If the parent 25 companies were not the same, then it would not be a</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Open line of -- no. We would -- we would 2 not -- Midcoast would not talk to Bishop without 3 K-Pipe's approval or concurrence or knowledge. 4 Q. Well, then, how would you generally seek that 5 approval or concurrence or knowledge? 6 A. We would talk to Cynthia Morelli about a change 7 or comment. If she said, "Oh, I'm fine with that, just 8 go ahead and send it to Pryde," we would. 9 Q. Now, was there any occasion that Morelli said 10 no to any of the requested changes that Midcoast made? 11 A. Oh, definitely, or she'd say give it to her and 12 she'd discuss it with her client or consider it, yes. 13 Q. What kind of issues were those, do you recall? 14 A. Not offhand. I just recall there were some, 15 but I don't know what they were specifically. 16 Q. Okay. Back on -- do you have this one handy, 17 Government Exhibit 160? 18 A. 160? Yes. 19 Q. Okay. Turn to page 4. The first full 20 paragraph, it says, "On September 30, 1999, Midcoast 21 signed a letter of intent to purchase the partnership 22 interests and certain other assets from K-Pipe Holdings, 23 an affiliate of Fortrend." And I think we saw that 24 earlier; is that right? 25 A. Correct, I agree.</p>	<p style="text-align: right;">Page 177</p> <p>1 wash. 2 Q. (BY MR. COFFIN) Okay. Because it would have 3 been two affiliated entities versus just the parent 4 company? 5 A. Or a third-party entity. 6 Q. Okay. What was it in this situation? 7 A. This situation was a concern we had that if 8 Midcoast individually owned the Butcher interest, that 9 perhaps Kansas Pipeline would not be able to recover 10 that in their rate case as part of whatever expenses 11 because it was owned by their parent company. 12 Q. Are you talking about the expense portion or 13 the revenue interest portion? 14 MR. STERN: Objection, form. 15 A. Well, yeah, two different ones. The Kansas 16 Pipe -- thinking of Kansas Pipeline Company, Kansas 17 Pipeline Company is filing a rate case and they're 18 telling the FERC, here are our expenses. 19 Q. (BY MR. COFFIN) Uh-huh. 20 A. We would like for you to approve our expenses 21 and allow us to recover in our cost of service all of 22 these expenses. 23 Q. Okay. And one of the expenses is purportedly 24 the Butcher interest expense? 25 A. Correct.</p>

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<p style="text-align: right;">Page 178</p> <p>1 Q. Okay.</p> <p>2 A. And if the FERC says, "Time out. That Butcher</p> <p>3 interest is actually owned by your parent company.</p> <p>4 We're not going to let you do that."</p> <p>5 Q. You're talking about the revenue interest</p> <p>6 portion?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. We saw that as a risk. So, being aware of that</p> <p>10 risk, was there a way to -- to structure that to</p> <p>11 minimize the risk. And the partnership was one way of</p> <p>12 minimizing the risk and also it helped us with our --</p> <p>13 what I believe was our inability to pay cash for it at</p> <p>14 that time.</p> <p>15 Q. Okay. Government Exhibit 76.</p> <p>16 A. Yes. Yes.</p> <p>17 Q. I'm sorry. This is a fax from Mr. Chachere to</p> <p>18 Jim Pryde, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And it looks like there's a little dissension</p> <p>21 involved in the message, where Chachere says, "Jim, this</p> <p>22 morning you informed me that you will not include any of</p> <p>23 my requested revisions to the Stock Purchase Agreement</p> <p>24 or any of other document which are considered business</p> <p>25 points."</p>	<p style="text-align: right;">Page 180</p> <p>1 advisors."</p> <p>2 A. I see that.</p> <p>3 Q. Do you know what the tax sharing agreement was?</p> <p>4 A. No. I just recall that there was one.</p> <p>5 Q. Okay. And up above that, under 10.2,</p> <p>6 Additional Conditions to the Obligations of Buyer to</p> <p>7 Close, what's an intercreditor agreement? Are you</p> <p>8 familiar with that phrase?</p> <p>9 A. I'm not. I don't -- I don't know. I don't</p> <p>10 recall. I mean, I can read the paragraph and say what</p> <p>11 I -- it appears it's requiring.</p> <p>12 Q. Uh-huh.</p> <p>13 A. It speaks for itself. It says, "Buyer shall</p> <p>14 cause an intercreditor agreement to be executed and</p> <p>15 delivered by the company's lenders unless buyer shall</p> <p>16 have elected to pay off the debt at closing."</p> <p>17 Q. Back on Government Exhibit 150, going</p> <p>18 chronologically --</p> <p>19 A. Yes, okay.</p> <p>20 Q. -- entries 10-13, 10-14, it says the stock</p> <p>21 purchase agreement -- or Chachere notes in his billing</p> <p>22 that he reviewed, revised several documents. In both</p> <p>23 entries he refers to the stock purchase agreement?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Is that, again, same question, the stock</p>
<p style="text-align: right;">Page 179</p> <p>1 A. I think his -- this is when we realized that</p> <p>2 they were reviewing our changes and making their own</p> <p>3 independent determination of which changes they would</p> <p>4 make to a redline document. Prior to this, we thought</p> <p>5 that their typing pool was missing some of the changes,</p> <p>6 and I think it was around this time we realized that it</p> <p>7 was -- they were intentionally not making some of our</p> <p>8 requested changes.</p> <p>9 Q. Okay. And Mr. Chachere is still negotiating on</p> <p>10 the stock purchase agreement. Paragraph 8.10, is a</p> <p>11 tax -- paragraph regarding tax treatment.</p> <p>12 Let's see. Did you have an opportunity to</p> <p>13 review this particular provision before it was sent or</p> <p>14 after it was sent to Mr. Pryde, I guess?</p> <p>15 A. I don't recall reviewing it, but I may have.</p> <p>16 Q. Uh-huh. Now, is this the provision that</p> <p>17 relates to the stock purchase agreement between Langley</p> <p>18 and K-Pipe or the stock purchase agreement between</p> <p>19 Midcoast and Langley?</p> <p>20 A. I believe this is between Midcoast and Langley,</p> <p>21 because I do not see any K-Pipe lawyers' names included</p> <p>22 on the copy.</p> <p>23 Q. The last item on this particular fax says Tax</p> <p>24 Sharing Agreement. It says, "Richard Robert is having</p> <p>25 the tax sharing agreement reviewed by Midcoast's tax</p>	<p style="text-align: right;">Page 181</p> <p>1 purchase agreement between Langley and Midcoast or stock</p> <p>2 purchase agreement between Langley and K-Pipe?</p> <p>3 A. I believe it's the stock purchase agreement</p> <p>4 between Midcoast and Langley.</p> <p>5 Q. Okay. And what makes you -- are you certain</p> <p>6 about that?</p> <p>7 A. No, I'm not certain about it.</p> <p>8 Q. Okay.</p> <p>9 A. As we looked at the other documents, there were</p> <p>10 no K-Pipe lawyer's names included in that, which leads</p> <p>11 me to believe that it -- they were not -- that was not</p> <p>12 their document.</p> <p>13 Q. Okay. The 10-15 entries related to revisions</p> <p>14 to comments and questions as to the project development</p> <p>15 agreement and the contingent revenue interest agreement,</p> <p>16 review of draft stock purchase agreement as to remaining</p> <p>17 issues and sections to be completed or drafted. Was</p> <p>18 there a project development agreement being negotiated</p> <p>19 in conjunction with the stock purchase agreement?</p> <p>20 A. Yes.</p> <p>21 Q. Between Langley and Midcoast?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And a contingent revenue interest</p> <p>24 agreement, same thing, same question?</p> <p>25 A. Yes.</p>

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<p>1 Q. Okay. Exhibit 78 is a letter, along with some 2 fax cover pages and a fax transmission document. This 3 is transmitting a letter from Dennis Langley to Jeff 4 Furman of K-Pipe Holdings Partners, LP, dated 5 October 21, '99, right? 6 A. Yes. 7 Q. Okay. Are you familiar with the -- this 8 document? 9 A. The letter itself, no, I'm not. 10 Q. It looks like Mr. Langley sent a copy of this 11 letter to Richard Robert; is that correct? 12 A. Yes. 13 Q. And why would he have done that, do you think? 14 A. To -- one of two things; either let Richard 15 know that the stock purchase agreement may be back on if 16 they're walking out -- 17 Q. Uh-huh. 18 A. -- or to simply advise him the possibility that 19 Midcoast would not be able to buy the assets from K-Pipe 20 because Langley is not going to sell them to K-Pipe. 21 Q. Okay. And do you remember the event or the -- 22 do you remember any discussion about Langley making this 23 known? 24 A. I recall a discussion with Robert only on the 25 fact that Langley was upset with the timing, how slow</p>	<p>1 It says, "Attached are the clean copies of what we 2 believe are the final documents. Dennis plans on 3 executing the SPA this evening and we have requested 4 signatures by K-Pipe and Fortrend also. JPP." Why was 5 Mr. Pryde transmitting clean copies of the SPA, stock 6 purchase agreement, between -- I assume that would be 7 between Langley and K-Pipe at this point, right? 8 A. That's correct. 9 Q. Okay. Why would you be or Midcoast be 10 receiving copies of those documents? 11 A. This would have told us that we are at the end 12 of our due diligence, that there are no changes to the 13 documents between those parties, which ultimately then 14 allows us to finalize our transaction with K-Pipe. 15 Q. Could that be done -- I'm curious as to why you 16 would get the entire stock purchase agreement when 17 that -- Midcoast could have been notified verbally, 18 couldn't they? 19 A. We could have been notified, but as a common 20 part of a due diligence, we review the entire 21 acquisition document or acquisition notebook or closing 22 book. 23 Q. Okay. Before the fact? 24 A. It's usually done before somebody sells the 25 assets. This was a little unique situation, that they</p>
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<p>1 things were going, and threatened to pull the deal. 2 Q. How did Midcoast react? 3 A. At this stage, we had become numb to the 4 threats. 5 Q. What do you mean? 6 A. Mr. Langley had made many, many threats during 7 the course of our negotiations, and not that we didn't 8 take them serious, but we perhaps didn't jump at each 9 one of them as we did the first month of the 10 negotiations. There was one meeting in the -- early on 11 where we were ready to go home on a Friday, go back to 12 Houston, and he walked in and -- and in so many words, 13 "If you walk out, you'll never do business in the energy 14 business world again," and numerous other things, so we 15 ended up staying and working through the weekend. 16 Q. Okay. By this time, the threat had been posed 17 by Mr. Langley, October 21 of '99. Do you know if by 18 then had you guys, Midcoast, quit negotiating the stock 19 purchase agreement? 20 A. I believe we had. 21 Q. By that time? 22 A. Yes. 23 Q. Okay. 89, Government Exhibit 89, please. This 24 is an e-mail from Mr. Pryde to Ron Chachere, Chip 25 Berthelot, Chris Kaitson, Tino Monaldo, and Yvette Korb.</p>	<p>1 were buying and selling, you know, in a short period of 2 time. That document is usually completed before we 3 start a due diligence. 4 Q. Back on Exhibit 150, which is the billing from 5 Chachere -- 6 A. Yes, okay. 7 Q. -- entry for October 26 of '99, Chachere says 8 he goes to Houston, "To Houston re: meeting with clients 9 and Dennis Langley," or Dennie Langley it says there. 10 A. Uh-huh. 11 Q. "Attorney Pryde, et al, going over issues." 12 Did Mr. Langley come to Houston on October 26th of '99? 13 A. He was in Houston on a couple times. I don't 14 remember that date specifically. 15 Q. Why would he have -- why would you be 16 talking -- I assume he still -- was he negotiating or 17 why was Mr. Langley in Houston? 18 MR. STERN: Objection, form. 19 A. I don't remember. I don't recall a meeting 20 with Langley in Houston involving Ron Chachere. 21 Q. (BY MR. COFFIN) Did he -- you said he did come 22 to Houston though? 23 A. He came to Houston on a regular basis. 24 Q. Uh-huh. To meet with Midcoast? 25 A. Yes.</p>

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<p style="text-align: right;">Page 186</p> <p>1 Q. On this transaction?</p> <p>2 A. Yeah. He was doing -- he was doing work for us</p> <p>3 other than just this transaction.</p> <p>4 Q. Oh, I'm sorry. I meant Mr. Langley.</p> <p>5 A. Okay.</p> <p>6 Q. Did he come to Houston?</p> <p>7 A. I recall him being in Houston two times. He</p> <p>8 may have been there more, but I only recall two times</p> <p>9 that he came to Houston.</p> <p>10 Q. Okay. You have no idea why he would have been</p> <p>11 in Houston after the stock purchase agreement between</p> <p>12 Langley and K-Pipe was finalized and ready to go?</p> <p>13 A. No idea.</p> <p>14 Q. And then the following entry, 10-27, '99,</p> <p>15 "Continued work on revising project and development</p> <p>16 agreement with Dennis Langley; work on revising guaranty</p> <p>17 agreements and the stock purchase agreement with</p> <p>18 Attorney Pryde." Does the timing of that make sense?</p> <p>19 A. No.</p> <p>20 Q. And 10-28-99, looks like Mr. Chachere is still</p> <p>21 talking to Dennis Langley?</p> <p>22 A. I see that on this bill. I don't understand</p> <p>23 that.</p> <p>24 Q. Okay. In those meetings where Langley came to</p> <p>25 your office, was Fortrend around?</p>	<p style="text-align: right;">Page 188</p> <p>1 to the stock purchase transaction between Langley and</p> <p>2 K-Pipe or to the transaction between K-Pipe and</p> <p>3 Midcoast?</p> <p>4 MR. STERN: Objection, form.</p> <p>5 A. I'm not sure.</p> <p>6 Q. (BY MR. COFFIN) Is that your handwriting on the</p> <p>7 second page?</p> <p>8 A. No, it's not.</p> <p>9 Q. Any idea whose handwriting that might be?</p> <p>10 A. No.</p> <p>11 Q. Okay. Turn to Government Exhibit 97, please.</p> <p>12 A. Okay.</p> <p>13 Q. There is an e-mail from you to you. I guess</p> <p>14 that would be -- is that a distribution list type thing?</p> <p>15 A. Apparently it is, yes.</p> <p>16 Q. And Morelli got it, Gary Wilcox, Graham Taylor,</p> <p>17 Richard Robert, Ron Chachere, Tom Palmisano. It's KPC</p> <p>18 documents. "Attached are the stock purchase agreement</p> <p>19 and the following related documents," and it lists</p> <p>20 several documents there. And it says missing are buyer</p> <p>21 K-Pipe's disclosure schedule, project development</p> <p>22 agreement, and the project participation agreement.</p> <p>23 Now, why are you transmitting the stock</p> <p>24 purchase agreement to those individuals?</p> <p>25 A. I'm confirming these are the final documents so</p>
<p style="text-align: right;">Page 187</p> <p>1 A. No.</p> <p>2 Q. Were they there?</p> <p>3 A. Never that I was aware of.</p> <p>4 Q. Turn to Government Exhibit 95, please.</p> <p>5 A. Okay.</p> <p>6 Q. This is a facsimile from you to Jim Pryde,</p> <p>7 correct?</p> <p>8 A. That's what it says, yes.</p> <p>9 Q. Dated October 28, October 28 of '99; is that</p> <p>10 right?</p> <p>11 A. Correct, yes.</p> <p>12 Q. And 26 pages in length; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And it says, "Attached are the following</p> <p>15 documents: Guaranty (Parent Assumption Agreement) -- I</p> <p>16 assume there's a closed paren there -- Guaranty (KPC);</p> <p>17 and Project Participation Agreement. Is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Is that your handwriting?</p> <p>20 A. No.</p> <p>21 Q. Okay. Whose handwriting is that?</p> <p>22 A. I don't have any idea. That's not my</p> <p>23 traditional fax cover page.</p> <p>24 Q. Okay. And then the next page, do these</p> <p>25 documents -- let me ask you, do these documents relate</p>	<p style="text-align: right;">Page 189</p> <p>1 that I can wrap up my due diligence, so I know that I</p> <p>2 have final documents that I'm reviewing.</p> <p>3 Q. Okay. Now, this -- so the final document would</p> <p>4 be between Langley and K-Pipe, correct?</p> <p>5 A. Between langley and K-Pipe? I believe so, yes.</p> <p>6 Q. Okay. Because this is October 29, '99?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. Had you revised -- reviewed and revised those</p> <p>9 documents or was that -- were you just transmitting</p> <p>10 them?</p> <p>11 A. No, I think I was just transmitting them,</p> <p>12 trying to get everybody's buyoff that we all had the</p> <p>13 final documents.</p> <p>14 Q. Okay.</p> <p>15 Okay. Turn to Government Exhibit 100.</p> <p>16 A. Different book?</p> <p>17 Q. Yeah. We get to graduate to the next binder.</p> <p>18 A. Okay.</p> <p>19 MR. COFFIN: Does anybody need a break?</p> <p>20 Okay.</p> <p>21 A. Which one is next? 100 to 201, okay. Exhibit</p> <p>22 100.</p> <p>23 Q. (BY MR. COFFIN) Yes. This is an e-mail from --</p> <p>24 the one I want to focus on was the one from Richard</p> <p>25 Robert to you and to Cynthia Morelli, Gary Wilcox,</p>

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Witness: Emmanuel (Chris) Kaitson

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<p>1 Graham Taylor, Ron Chachere, Tom Palmisano, and Chip 2 Berthelot, dated 10-30 of '99. Do you see that? 3 A. Yes. 4 Q. Okay. It says, "There has been a change to the 5 deal based on PWC's objection to characterizing the 6 supplemental payment of \$13.75 as capital gain." Were 7 you aware of that issue at the time? 8 A. No, I don't recall that. 9 Q. Okay. You did -- but you did get a copy of the 10 e-mail, didn't you? 11 A. Yeah. I am on there, so I assume I did, yes. 12 Q. You weren't involved in any of the negotiation 13 of those -- of this particular issue at all? 14 A. No. 15 Q. Okay. 16 A. Not that I remember. 17 Q. Okay. And turn the page. 18 Let me back up. It looks like at the 19 bottom of the first page of Government Exhibit 100 is 20 another -- the beginning of another e-mail from 21 Mr. Wilcox dated 10-30-99 at 4:2500 p.m., to the same 22 distributees, including you, Robert, et cetera. Do you 23 see that? 24 A. Yes. 25 Q. It says revisions to the documents -- revisions</p>	<p>1 MR. COFFIN: I'm sorry. Under -- I'm on 2 DOJ 1108, which is the second page of that exhibit, and 3 about two-thirds of the way down there is an Item 2, 4 Guaranty by KPC. 5 MR. STERN: Okay. 6 MR. COFFIN: And then down below that, 7 under A and B, there's some bold. 8 MR. STERN: Oh. 9 A. No, I don't remember why he did that or why he 10 suggested that. 11 Q. (BY MR. COFFIN) If you turn the page -- turn 12 the page and there's some more discussion there on the 13 stock purchase agreement by Wilcox. Item No. 3 says, 14 "It is critical to Midcoast's tax position that the 15 Bishop Group, Ltd. is not liquidated by Fortrend for at 16 least two years. Somewhere K-Pipe needs to represent a 17 covenant that it has no plan or intention to liquidate 18 The Bishop Group, Ltd., and in any event will not 19 liquidate such corporation for at least two years. Such 20 a provision would look unusual in the asset purchase 21 agreement. However, in light of K-Pipe's obligation to 22 pursue certain lawsuits in the name of The Bishop Group, 23 Ltd., it would seem necessary for K-Pipe to represent 24 and covenant to Langley in the stock purchase agreement 25 that it will not liquidate the purchased corporation for</p>
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<p>1 to documents, and he discusses several changes that need 2 to be made, so -- so then it says, "To reflect the 3 foregoing, the following changes should be made." So 4 stock purchase agreement, there are changes made to the 5 stock purchase agreement. I assume that's the stock 6 purchase agreement between Langley and K-Pipe, correct? 7 A. I would assume that, yes. 8 Q. Okay. And then the same with regard to 9 document or the item listed in No. 2 and 3; would you 10 agree? 11 A. I would agree. 12 Q. Okay. So there was still -- Wilcox still had 13 an opportunity to negotiate provisions or terms in the 14 stock purchase agreement; is that right? 15 A. Apparently so. 16 Q. And Wilcox represented Midcoast and not K-Pipe, 17 correct? 18 A. Correct. 19 Q. He says under Item No. 2, "Note that the option 20 agreement must not be guaranteed by Midcoast pursuant to 21 the parent guarantee. There is no need for that 22 anyway." So, why -- do you know why he said the option 23 agreement must not be guaranteed by Midcoast? What was 24 his reason for that statement? 25 MR. STERN: Where are you?</p>	<p>1 as long as the lawsuits are alive. But we could add 2 that in no event will such liquidation occur before two 3 years." 4 Do you know why that provision or those -- 5 that language is critical to Midcoast's tax position? 6 A. He was the tax expert, so, no, I don't know why 7 that was critical. 8 Q. Under Item No. 4, Purchase and Sale Agreement, 9 it says Wilcox is negotiating some of the purchase or -- 10 suggesting terms for the purchase and sale agreement, I 11 take it. He says, "I would like K-Pipe to think about 12 retaining some of the receivables that are currently in 13 KPC. I understand that some of those receivables are 14 due from governmental agencies, with little, if any, 15 collection risk involved." 16 Any idea why he's suggesting that K-Pipe 17 think about retaining receivables? 18 A. No, no idea. 19 Q. Next, Government Exhibit 101, at the top e-mail 20 from Tom Palmisano to Richard Robert, 10-30 of '99, it 21 talks about a memo that Mr. -- Mr. Palmisano talks about 22 a memo that he's preparing. Did you ever have an 23 opportunity to review that memo regarding a capital gain 24 of \$13.75 million? 25 A. No.</p>

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<p style="text-align: right;">Page 194</p> <p>1 Q. 103, e-mail from you, Mr. Kaitson, to James 2 Pryde and various other people, dated 10-30 of '99, 3 4:54 p.m., and you're requesting changes to the stock 4 purchase agreement. And you say K-Pipe has requested 5 the following changes; is that right? 6 A. Yes. 7 Q. Now, why are you asking or why are you telling 8 James Pryde to make changes requested by K-Pipe? You 9 didn't represent K-Pipe, did you? 10 A. I did not. I did not. Obviously, I would have 11 had a discussion with Cynthia Morelli about some issues; 12 and she would have said, fine, go ahead and convey that 13 information directly to Pryde. 14 Q. Okay. 15 A. And I would have copied her on that to let her 16 know that I did it. 17 Q. Would there have been any correspondence 18 between you and Morelli that -- where you're asking for 19 permission to make these changes and asking if you could 20 forward those changes on to James Pryde? 21 A. There may have been, but I -- I don't know. 22 There may have been, but I don't recall. 23 Q. Okay. I haven't seen any. 24 A. Okay. 25 Q. That's why I was asking.</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Okay. 2 Q. This is the -- let's see. This looks like a 3 side letter between K-Pipe Merger Corporation and Dennis 4 Langley dated -- doesn't have a date on it, but it 5 references the stock purchase agreement dated as of 6 October 25 of '99? 7 A. Okay. 8 Q. And it says, "This letter agreement is being 9 executed and delivered contemporaneously with the 10 execution of the purchase agreement"? 11 A. Correct. 12 Q. "And as an amendment thereto." Looks like 13 there is where the \$15 million fee is negotiated or the 14 break-up fee, what I call it, between Langley and K-Pipe 15 in paragraph 1. That's where that fee is set out; is 16 that correct? 17 A. Yes, at the end of paragraph 1. 18 Q. Okay. And then paragraph 2 says, "K-Pipe 19 represents and warrants to Langley that K-Pipe has no 20 plan or intention to liquidate the company and agrees it 21 will not liquidate the company for at least two years 22 after the closing date." Is that the same provision 23 that was requested by Mr. Wilcox in those e-mails? 24 A. This appears to be the same idea or the same 25 type of provision.</p>
<p style="text-align: right;">Page 195</p> <p>1 A. No. We usually just picked up the phone and 2 called each other. As you can see, the changes are not 3 significant. We're not changing paragraphs; we're 4 changing a word here or there. Each party would pull 5 out the document. We'd look and see what the change was 6 and -- 7 Q. And you reference certain guaranties and 8 assumptions in paragraph 5 or item No. 5 in the e-mail? 9 A. Yes, I do. 10 Q. And "There are six guaranties and assumptions. 11 Are they all drafted?" And within that, "Midcoast 12 guaranty of KPC obligations under the stock purchase 13 agreement." So, did -- did Midcoast guarantee KPC 14 obligations under the stock purchase agreement? 15 A. There was some type of a guaranty. I don't -- 16 without looking at the guaranty, I don't recall -- 17 Q. Okay. 18 A. -- how it tied. 19 Q. Was there -- was that something Langley 20 requested? 21 A. I'd have to refer to the document. I seem to 22 recall there was an obligation of any purchaser of the 23 assets to issue a guaranty to Langley. 24 Q. I hate to do this to you, but we've got to go 25 backwards for a minute to 79.</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. Okay. Why does -- do you know why K-Pipe made 2 this represent -- representation to Langley in this side 3 letter rather than in the stock purchase agreement? 4 A. I do not. 5 Q. And on Government 150, which is Chacere's 6 billing invoice, page 8, entry on October 29 of 1999 -- 7 I'm sorry, entry October 31 of '99, he talks about 8 making revisions to the guaranty (parent) purchase 9 agreement, option agreement and side letter, and 10 e-mailing same to the parties. So he's still working on 11 the purchase agreement as of October 31 of '99; is that 12 right? 13 A. I'm not sure if that's it or if he's working on 14 the guaranty that goes with the stock purchase 15 agreement. 16 Q. Oh, okay. And the option agreement and side 17 letter? 18 A. Right. There's no comma between the guaranty 19 and stock purchase. That makes me think that it might 20 be the guaranty associated with that stock purchase 21 agreement. 22 Q. What was the -- 23 A. I don't know. 24 Q. Okay. What was the side letter he was to be 25 working on?</p>

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<p>1 A. I don't know.</p> <p>2 Q. Exhibit 105?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Then at the top it's an e-mail from you to</p> <p>5 various people: Morelli, Wilcox, Taylor, Robert,</p> <p>6 Chachere, Palmisano, and it says, "Assumption agreement</p> <p>7 is back in. See Gary's other comments below." And</p> <p>8 Mr. Wilcox -- below there is an e-mail from Wilcox to</p> <p>9 you, Robert and Palmisano. Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. In the second paragraph of Mr. Wilcox's e-mail,</p> <p>12 he says, "The third guarantee gave me the most</p> <p>13 heartburn. Obviously I do not want to see Midcoast, the</p> <p>14 asset buyer, providing a guarantee of certain</p> <p>15 obligations under the stock purchase agreement."</p> <p>16 A. That's what it says, yes.</p> <p>17 Q. Why would that give Mr. Wilcox heartburn, do</p> <p>18 you know?</p> <p>19 MR. STERN: Objection, form.</p> <p>20 A. I don't know.</p> <p>21 Q. (BY MR. COFFIN) So it says, "However, it became</p> <p>22 very clear that Langley would not do the deal without</p> <p>23 it. So I got Tino to soften some of the language in the</p> <p>24 guarantee by not referring to Langley personally.</p> <p>25 Instead, the guarantee ran to MRG and its individual</p>	<p>1 A. No. I see that, but, no, I don't remember what</p> <p>2 the issues surrounding them were.</p> <p>3 Q. Okay. Okay. 106, 10-31-99 e-mail from you,</p> <p>4 Mr. Kaitson, to various people, including Morelli,</p> <p>5 Wilcox, Taylor, Robert, Chachere, Palmisano, dated</p> <p>6 10-31-99, 9:35 a.m. in the morning.</p> <p>7 A. Yes.</p> <p>8 Q. It says, "As a result of the phone conference</p> <p>9 on Sunday at 10:30, Jim and Tino are making the</p> <p>10 following changes." So you say K-Pipe is make --</p> <p>11 proposing the following to the SPA; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. My question again is why isn't Morelli at her</p> <p>14 office making these changes as opposed to you, who is</p> <p>15 employed by Midcoast and representing Midcoast, making</p> <p>16 these changes?</p> <p>17 A. Well, once again, we were on a conference call</p> <p>18 and I was obviously in the office at the time and</p> <p>19 perhaps other people were not, so I was able to transmit</p> <p>20 the e-mail.</p> <p>21 Q. Okay. Who was on the conference call?</p> <p>22 A. Specifically, I don't remember. I mean, that</p> <p>23 is what I would take from this, that there was a</p> <p>24 discussion with folks. And I don't remember who they</p> <p>25 were with. This was discussed and I sent out a</p>
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<p>1 members, which helped me to associate the guarantee with</p> <p>2 a change of control under the PDA rather than the SPA.</p> <p>3 We also referred to Newco GP and KPC collectively as the</p> <p>4 subsidiaries so we would not repeatedly refer to</p> <p>5 Midcoast's guarantee of KPC's obligations."</p> <p>6 A. That's what it says, yes.</p> <p>7 Q. Okay. Do you remember what issues were</p> <p>8 surrounding this particular e-mail at the time?</p> <p>9 A. I do not.</p> <p>10 Q. Do you know what the problem is with this naked</p> <p>11 guarantee by Midcoast of KPC's guarantee of the tax</p> <p>12 indemnity?</p> <p>13 MR. STERN: Objection, form.</p> <p>14 Q. (BY MR. COFFIN) That's the following paragraph.</p> <p>15 I'm sorry, I jumped the gun. He says, "What I don't</p> <p>16 want to see is just a naked guarantee by Midcoast of</p> <p>17 KPC's guarantee of tax indemnity." Do you know what the</p> <p>18 tax indemnity was?</p> <p>19 A. There was a tax sharing document. There may</p> <p>20 have been a tax indemnity, but I don't recall.</p> <p>21 Q. Okay. Do you know why?</p> <p>22 A. I do not.</p> <p>23 Q. Okay. You don't know anything about these</p> <p>24 issues in this e-mail, even though you were the</p> <p>25 recipient of the e-mail?</p>	<p>1 confirming e-mail.</p> <p>2 Q. Okay. In Item 2 it says the purchase price is</p> <p>3 being increased by 3 million and the PDA termination</p> <p>4 option fee reduced by 3 million. So that's -- would you</p> <p>5 consider that a -- a material provision?</p> <p>6 A. A \$3 million change would be, yes.</p> <p>7 Q. Do you know why the purchase price was being</p> <p>8 increased by \$3 million and the term -- and the PDA</p> <p>9 termination fee reduced by 3 million?</p> <p>10 A. I do not.</p> <p>11 Q. And why all references to the option</p> <p>12 termination fee would be removed from the stock purchase</p> <p>13 agreement?</p> <p>14 A. No, I don't recall why we did that.</p> <p>15 Q. Okay. E-mail or Exhibit -- Government Exhibit</p> <p>16 107.</p> <p>17 A. Okay.</p> <p>18 Q. This is an e-mail in the middle of the page or</p> <p>19 the bottom half of the page from Wilcox to you,</p> <p>20 Mr. Kaitson?</p> <p>21 A. Correct.</p> <p>22 Q. Dated October 31 of '99?</p> <p>23 A. Yes.</p> <p>24 Q. 10:42 p.m., and it says, "Did you discuss with</p> <p>25 Dennis the changes I recommended on my Saturday e-mail</p>

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 202</p> <p>1 to you, specifically a provision requiring MRG to report 2 the cancellation fee as ordinary income?" Were you 3 talking to Mr. Langley at the time? 4 A. I must have been, but I do not recall that. 5 Q. And then at the bottom of that page there is an 6 e-mail from Mr. Wilcox dated 11-2-99 at 4:2000 p.m., to 7 Chachere, along with cc-ing you, Robert, Berthelot, 8 Palmisano. "Remaining Items" is the subject. 9 A. Yes. 10 Q. Says, "Tom and I discussed with you the 11 following items that remain to be done in the documents 12 as far as we are concerned." And these are all the 13 documents -- take a look at that, but are these all the 14 documents related to the stock purchase agreement 15 between Langley and K-Pipe? 16 A. Some of the documents I can specifically 17 identify which transaction they're associated with. 18 Q. Uh-huh. 19 A. Others, it's not clear from reading what's said 20 in here. 21 Q. Okay. So, which ones can you identify? Stock 22 purchase agreement, obviously? 23 A. Correct, yeah that's the one that's obvious. 24 And the representations and the SPA to the effect that 25 K-Pipe has no plans or intentions to liquidate the</p>	<p style="text-align: right;">Page 204</p> <p>1 e-mail from you to various people, some of the same 2 people, and it's says, "PWC's other comments are being 3 addressed, but Item 3, per Jim Pryde, does not belong in 4 the SPA. They have no reason to be interested in such 5 two-year period. What about putting it in the asset 6 agreement or a side letter? Item 4 is K-Pipe/Midcoast 7 escrow agreement change." 8 What was so important about that 9 representation, do you recall? 10 A. I don't. It obviously was very important to, 11 you know, the tax folks -- 12 Q. Uh-huh. 13 A. -- that two-year period, but I don't recall why 14 it was that important. 15 Q. Okay. I assume that's Chachere's handwriting 16 there, "Jim, this needs to be done. Ron"? 17 A. Yes. 18 Q. And I guess we saw that -- didn't we see that 19 in the side letter earlier? 20 A. We did see that in the side letter, yes. 21 Q. Exhibit 79 -- 22 Did you have drafts of the stock purchase 23 agreement between Langley and K-Pipe on your computer 24 system that you were making changes to? 25 A. Did I have drafts? If they were e-mailed to</p>
<p style="text-align: right;">Page 203</p> <p>1 Bishop Group, that clearly is between those two parties. 2 The other documents I know were documents that were part 3 of the Langley to K-Pipe transaction. 4 Q. Okay. And the next page, Government 108, is an 5 e-mail from Pryde to Joyce Essig, whoever that is, and 6 Gary Wilcox, dated 11-of '99, 7:24 p.m., Subject: 7 Comments to documents. It says, "Gary, Ron sent us your 8 comments on the various documents. Our responses are as 9 follows. Letters correspond to the letters in Ron's 10 e-mail, which I assume is based on an e-mail from you." 11 It looks like Pryde is telling Gary Wilcox 12 what provisions or what -- what modifications will be 13 made to those various agreements; is that right, sir? 14 A. That's the way it appears. 15 Q. Government Exhibit 109, e-mail from -- there's 16 a couple of e-mails on this document. The first one is 17 from Palmisano to Chris Kaitson, several others, 18 including Morelli, Wilcox, Graham Taylor, Richard 19 Robert. It says, "This is a very important 20 representation which needs to be in either the SPA or a 21 side letter between K-Pipe and Langley. This should 22 definitely not be in the asset purchase agreement as an 23 asset buyer would be indifferent. Call me if you have 24 questions." 25 And down below, I think there is another</p>	<p style="text-align: right;">Page 205</p> <p>1 me, then, yes, I did. 2 Q. Okay. Would you physically go in and make the 3 changes yourself or direct somebody in your office to 4 make the changes? 5 MR. STERN: Objection, form. 6 MR. COFFIN: That's a good objection. 7 Q. (BY MR. COFFIN) Did you make any changes to the 8 agreements that were on your computer, the stock 9 purchase agreement? 10 A. I don't recall if I did or not. 11 Q. Is it possible that you did? 12 A. It's possible. 13 Q. Okay. Turn to Government Exhibit 111. 14 A. Okay. 15 Q. There is a facsimile from you to Jim Pryde; is 16 that correct? 17 A. Correct. 18 Q. Dated November 4 of '99; is that right? 19 A. Yes. 20 Q. And the message is, "Attached is a partially 21 executed side letter," correct? 22 A. Yes. 23 Q. And this side letter is between K-Pipe Merger 24 Corporation and Midcoast; is that correct? 25 A. Yes.</p>

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 206</p> <p>1 Q. And it's signed by Richard Robert on the third 2 page? 3 A. Correct. 4 Q. And unsigned by K-Pipe Merger. Why would you 5 be transmitting this letter to James -- Jim Pryde? 6 A. We're anticipating purchasing the assets from 7 K-Pipe. 8 Q. So -- but Jim Pryde represents Langley, 9 correct? 10 A. Correct. 11 Q. Okay. So, again, why -- why would you be 12 transmitting this to Jim Pryde, I mean, Langley's 13 attorney? Did Langley want assurances that you were 14 going to buy the assets from K-Pipe? 15 A. Let me finish reading it. I -- 16 Q. Okay. 17 A. See if it comes back to me. 18 I did fax it to him, obviously. That's my 19 fax sheet. I'll be darned if I remember why. 20 Q. Okay. Turn to Government Exhibit 115, please. 21 A. Okay. 22 Q. This is a -- these are documents provided by 23 Price Waterhouse Coopers, and really the first page is 24 redacted, but the second page is the same, same page but 25 it's unredacted, not redacted, and I'm just wondering if</p>	<p style="text-align: right;">Page 208</p> <p>1 to Hoffman and then Hoffman forwarded them to Graham 2 Taylor. 3 Hoffman says, "This seems okay to me. 4 What do you think?" And Taylor says, "Yes, but even 5 better if they mention K-Pipe, i.e. us." Do you know 6 why K-Pipe was not mentioned? 7 Let me ask you this. K-Pipe was not 8 mentioned in the press release, was it? 9 A. I don't recall. 10 Q. Okay. Do you ever recall any discussion 11 whether or not to mention K-Pipe in the press release? 12 A. No, I do not. 13 One correction, though. Duane Herbst is 14 the corporate secretary. He's the son of the founder, 15 not the son of the -- 16 Q. Board member? 17 A. -- board member. 18 Q. Okay. Thank you. 19 MR. STERN: How much more do you have? 20 MR. COFFIN: I don't know, to tell you the 21 truth. Do you want to take a quick break? 22 MR. STERN: Yeah, if we can take a break. 23 MR. COFFIN: Let's take a quick break and 24 then I'll -- 25 (Recess from 4:22 p.m. to 4:34 p.m.)</p>
<p style="text-align: right;">Page 207</p> <p>1 you -- did you ever have a chance to review this 2 engagement letter between Price Waterhouse Coopers and 3 Midcoast? 4 A. No, I don't remember seeing this. 5 Q. Okay. Did you ever deal at all with the 6 payment of PWC, as far as overseeing, authorizing the 7 payment to Price Waterhouse Coopers? 8 A. No. 9 Q. That was all Robert, as far as you knew? 10 A. Yes. 11 Q. Turn to the Government Exhibit 121. 12 MR. STERN: I wonder who KPLB is. 13 MR. COFFIN: KPLB? I do not know at this 14 time, but I could find out for you. These are documents 15 provided by the IRS pursuant to a summons, I believe. 16 MR. CROKE: KPLB? Don't know. 17 Q. (BY MR. COFFIN) Appears to be an e-mail, couple 18 of e-mails. One, though, was from Duane Herbst. Is 19 that the board member's son or -- 20 A. That's correct. 21 Q. To Chip Berthelot, Pam Jones, Chris Kaitson, 22 Richard Robert. Re: Subject: Kansas Pipeline Release. 23 "Please find attached the latest version of the 24 KPC/Midcoast Press release. Let me have any comments as 25 soon as possible." It looks like those were forwarded</p>	<p style="text-align: right;">Page 209</p> <p>1 MR. COFFIN: All right. Let's go back on 2 the record. 3 Q. (BY MR. COFFIN) Mr. Kaitson, as far as 4 communications with Price Waterhouse Coopers during this 5 time period of these transactions, were you the person 6 that communicated with PWC? 7 A. I was not the main contact. I rarely 8 communicated with them. 9 Q. Okay. Would Richard Robert be the main 10 contact? 11 A. Yes. 12 Q. So he would be a better source of answers to my 13 questions than you would be? 14 A. Yes. 15 Q. Okay. I will reserve some of these questions 16 for him tomorrow. 17 A. Thank you. 18 Q. Turn to 170, please. It looks like this is a 19 series of e-mails between you and Ms. Morelli. I'll let 20 you get there. 21 A. Okay. 22 Q. A series of e-mails between you and Ms. Morelli 23 concerning FERC jurisdiction; is that correct? 24 A. Yes. 25 Q. Okay. Let's go back. I'm sorry, let's go back</p>

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Witness: Emmanuel (Chris) Kaitson

<p style="text-align: right;">Page 210</p> <p>1 to 169. I didn't see that one. 2 This is a fax from you to Ms. Morelli and 3 it's regarding K-Pipe data request? 4 A. Correct. 5 Q. Tell me what was going on that you needed to 6 make this request to send this facsimile to Ms. Morelli. 7 A. Kansas Pipeline Company had filed a rate case, 8 and as part of the rate case the staff of the FERC is 9 allowed to do discovery. They obviously sent us a data 10 request or request for discovery. 11 Q. Uh-huh. 12 A. And we needed assistance from K-Pipe to answer 13 some questions. 14 Q. Okay. On the third page of that exhibit, 15 there's a request on the left. What are those items in 16 the first column, where it says MGE4-whatever? 17 A. MGE would be the name of the company that is 18 providing these requests to the FERC to give to us. 19 MGE, Missouri Gas -- I don't know if it's Gas Energy or 20 Gas Electric. 21 Q. Oh, so other parties were allowed to make 22 requests during the FERC hearing? 23 A. Correct, yes, they are. 24 Q. Okay. And under the -- next to the request MGE 25 4-17, the request is made, "Did Midcoast ever negotiate</p>	<p style="text-align: right;">Page 212</p> <p>1 we could review those and determine whether we want to, 2 you know, make copies, rather than having you copy them 3 and send them down? 4 MR. STERN: We can talk about that at a 5 break and let you know. 6 MR. COFFIN: Sure. 7 MR. STERN: I just don't know how they're 8 maintained. 9 MR. CROKE: The volume? 10 MR. STERN: The volume and where they are 11 and whether they're intermixed with privileged stuff. 12 MR. COFFIN: Sure. 13 MR. STERN: I mean -- 14 MS. JORDAN: I don't know. 15 MR. COFFIN: Okay. Well, I will -- I'll 16 write a letter to you; okay? 17 MR. STERN: Yeah. Just off the record. 18 (Recess from 4:40 p.m. to 4:41 p.m.) 19 Q. (BY MR. COFFIN) All right. With regard to the 20 responses to these requests shown on Government Exhibit 21 169, would Midcoast have drafted a response to this or 22 was that something that would have been done by outside 23 attorneys? 24 A. Jointly. 25 Q. Jointly.</p>
<p style="text-align: right;">Page 211</p> <p>1 directly with Dennis Langley to purchase the partnership 2 assets? If yes, why was the sale structured to go 3 through a middleman entity? Why did Midcoast not buy 4 the partnership assets directly from Bishop Group, 5 Ltd.?" 6 Was there a response made to this specific 7 request? 8 A. I would expect there was, yes. 9 Q. Okay. Do you know what form would that 10 response have been in? 11 A. That response would have been filed with the 12 FERC. 13 Q. Okay. 14 A. It would have been a written response. 15 MR. COFFIN: Okay. Did we get a copy of 16 these responses, do you know? 17 MS. PIPKIN: I can't tell you off the top 18 of my head. 19 MR. COFFIN: Okay. If not -- 20 MR. STERN: We will. 21 MR. COFFIN: -- can I get those? 22 MR. STERN: Yeah. 23 MR. COFFIN: What might be good is if we 24 could get -- I don't know that we got any of the 25 documents related to the FERC hearing. Is there any way</p>	<p style="text-align: right;">Page 213</p> <p>1 A. But a written response would have been prepared 2 and provided. 3 Q. Okay. And then you don't -- but you don't -- 4 Midcoast did not retain any of those documents; is that 5 what you're saying? 6 A. If they're extremely voluminous, we usually do 7 not retain them, especially in a case of this type, 8 which is being -- which was appealed. There were cases 9 of documents, in the hundreds. 10 Q. Okay. 11 MR. STERN: Cases being boxes? 12 THE WITNESS: Yes. 13 MR. COFFIN: Sounds like fun going through 14 them. 15 MR. STERN: We'll put you in a warehouse. 16 MR. COFFIN: Yeah, nice hot warehouse, I'm 17 sure. I've been there, done that before. 18 Q. (BY MR. COFFIN) Exhibit 170, please. 19 A. Okay. 20 Q. This is a series of e-mails between you and 21 Cynthia Morelli, correct? 22 A. Yes. 23 Q. Generally, tell me what was her concern 24 regarding the FERC case. 25 A. I don't remember offhand. Let me read it.</p>

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Witness: Emmanuel (Chris) Kaitson

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<p>1 There was a concern by someone at the FERC 2 that Dennis Langley still owned Kansas Pipeline Company 3 or had some type of an interest in finan -- in Kansas 4 Pipeline Company. We received a letter from K-Pipe 5 indicating that Bishop was no longer a Dennis Langley 6 Company and that K-Pipe was not owned by Dennis Langley. 7 We were requesting to file that with the FERC, and she 8 expressed a concern that by filing a K-Pipe letter with 9 the FERC perhaps K-Pipe was exposing themselves to FERC 10 jurisdiction. 11 Q. Okay. 12 A. So we were simply trying to answer the 13 questions on Government Exhibit 169. 14 Q. Was the letter entered into and made part of 15 the FERC, official FERC records? 16 A. I don't recall. 17 Q. 186, please. 18 A. Okay. 19 Q. This is an e-mail from Wilcox to Bob Whitten. 20 Do you know who Bob Whitten or Robert H. Whitten is? 21 A. I do not. 22 Q. And Tom Palmisano. It says, "Subject: IRS 23 warning on Midco transactions," dated late January -- or 24 January 18, 2001, and it looks like there is an IRS 25 notice or a summary of the notice is followed -- follows</p>	<p>1 Midcoast they were -- 2 Q. No, no, no, no. 3 A. I'm sorry. 4 Q. That is -- this is a general notice, not 5 necessarily aimed at -- 6 A. Okay. 7 Q. -- at the transaction that Midcoast entered 8 into. 9 A. Okay. I don't think Midco -- 10 Q. I know that was a bad question, but, yeah, I 11 was wondering if you were ever aware of this notice that 12 came out by the IRS? 13 A. No, not at that time period. 14 Q. Okay. 15 A. It was late 2002, perhaps early 2003, that I 16 remember becoming aware of this. 17 Q. Okay. And what you became aware of is not 18 necessarily the notice, but the fact that the IRS was 19 looking at the Midcoast/K-Pipe transaction? Is that 20 what you became aware of? 21 A. I became aware of that at some point, but at a 22 different point in time I became aware of Price 23 Waterhouse being required to turn over Midcoast's name 24 to the IRS. And those are two different recollections, 25 but I don't remember what the time periods are in either</p>
Page 215	Page 217
<p>1 there. 2 Were you aware back in January of 2001 3 that the IRS had issued a warning, a warning on 4 intermediary transactions? 5 A. No. 6 Q. When did you become aware that the IRS was 7 looking at the transaction that Midcoast had entered 8 into as an intermediary transaction? 9 A. 2002, I believe. 2001 is when Enbridge 10 acquired Midcoast. 11 Q. Uh-huh. 12 A. And I don't believe I knew about that during 13 that transaction. 2002 was another large transaction we 14 called the I-share Formation and I don't believe I knew 15 about it during that part of the -- during that 16 transaction either. 17 Q. When you say knew about it, you mean the IRS 18 was reviewing the transaction, the Midcoast/K-Pipe 19 transaction? 20 A. Correct, yes. 21 Q. Okay. 22 A. I don't know, is it Midcoast or Midco? I'm 23 not -- 24 Q. Oh. 25 A. You're interpreting that to mean that it's</p>	<p>1 one of those. 2 Q. Did anybody at PWC ever discuss with you or 3 anybody at Midcoast whether the fact that bringing 4 Fortrend and K-Pipe into the transaction would result in 5 tax benefits to Midcoast? 6 A. Did not discuss that with me. 7 Q. So, as far as you knew, bringing or having 8 Fortrend being involved in the transaction and under the 9 name of K-Pipe or K-Pipe Merger Corporation, you were 10 not aware that that use, bringing them into the 11 transaction, resulted in tax benefits to Midcoast? 12 A. Well, I'm aware that an asset transaction gives 13 you the step-up in your basis -- 14 Q. Okay. 15 A. -- whereas, a stock transaction does not 16 automatically do that. 17 Q. Right. 18 A. So that's a yes and no to your question. 19 Q. Okay. 183, please. 20 A. Okay. 21 Q. There is from Richard Robert to various people, 22 including you, correct? 23 A. Yes. 24 Q. An E-mail dated 11-7, 2000, and Mr. Robert says 25 he just got off the phone with Jeff Furman at K-Pipe and</p>

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Witness: Emmanuel (Chris) Kaitson

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<p>1 "he has requested that we buy him out of the Butcher 2 Partnership." 3 A. Yes. 4 Q. Do you know why Mr. Furman requested that 5 Midcoast buy K-Pipe out of the partnership? 6 A. No, I do not. 7 Q. Did you have any involvement as far as buying 8 that partnership interest? 9 A. I drafted the documents for that. 10 Q. Okay. 184, that is an e-mail from you to 11 Robert; Weiner, Jeff. Jeff Weiner, who is that? 12 A. Jeff is in the accounting department, but I 13 don't recall what his responsibilities were. 14 Q. Okay. And Tom Palmisano, an e-mail dated 11-7, 15 2000, regarding the Butcher Partnership, and you say in 16 the e-mail, "I have talked with Tom Palmisano and based 17 on his recommendation," and certain events are listed 18 there. Why would you necessarily talk to Mr. Palmisano 19 about this matter? 20 A. Where -- where the funds should come from, 21 which party would be the ultimate owner of it, of the 22 asset. 23 Q. Uh-huh. I mean, why -- but why ask 24 Mr. Palmisano? I mean -- yeah, Mr. Palmisano, isn't he 25 a tax guy?</p>	<p>1 of that research or analyzed it? 2 A. I do not know. 3 MR. COFFIN: Okay. I think I'm done. 4 MR. STERN: All right, good. 5 MR. COFFIN: Thank you, sir. 6 (Proceedings at 4:53 p.m.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 A. He is a tax guy. I would only go to him if 2 Richard Robert was not available. So, for some reason, 3 perhaps I couldn't get ahold of Richard. I would never 4 go directly to Tom if I knew that Richard was available. 5 MR. COFFIN: Okay. Did -- those exhibits 6 earlier that I was asking you about, unsigned documents, 7 did you come to a conclusion on those? 8 MS. PIPKIN: Do you want to go off the 9 record for a second so I can just show you what we have 10 and then -- 11 MR. COFFIN: Sure. 12 (Recess from 4:53 p.m. to 4:54 p.m.) 13 Q. (BY MR. COFFIN) Just a few more questions. 14 A. Okay. 15 Q. Do you have any tax law experience, 16 Mr. Kaitson? 17 A. Definitely not. 18 Q. Did you ever have occasion to research or 19 analyze the tax issues related to either the stock 20 purchase transaction between Langley and -- or the 21 proposed stock purchase transaction between Langley and 22 Midcoast or the asset purchase between Midcoast and 23 K-Pipe? 24 A. No. 25 Q. Do you know if anyone at Midcoast ever did any</p>	<p>1 CHANGES AND SIGNATURE 2 PAGE LINE CHANGE REASON 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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I declare under penalty of perjury that the foregoing is true and correct.

EMMANUEL (CHRIS) KAITSON

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by the witness, EMMANUEL (CHRIS) KAITSON, on this the _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My Commission Expires: _____

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STATE OF TEXAS
COUNTY OF HARRIS

REPORTER'S CERTIFICATE
ORAL DEPOSITION OF EMMANUEL (CHRIS) KAITSON
January 31, 2007

I, the undersigned Certified Shorthand Reporter in and for the State of Texas, certify that the facts stated in the foregoing pages are true and correct.

I further certify that I am neither attorney or counsel for, related to, nor employed by any parties to the action in which this testimony is taken and, further, that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

SUBSCRIBED AND SWORN TO under my hand and seal of office on this the _____ day of _____, _____.

Laraine L. Toliver, CSR 433
Expiration: 12/31/2008
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